



# YOURS FOR THE ASKING

## Kentucky's open records audit

### GOING TO COURT

# Sometimes suits needed to pry information loose

By Bill Estep  
Lexington Herald-Leader

LEXINGTON, Ky. — It's been said that the price of freedom is eternal vigilance. For newspapers and the public, one thing that means is sometimes having to fight in court to defend First Amendment freedoms and gain or maintain access to public records.

There have been lawsuits related to a wide variety of open records in Kentucky in recent years, such as information from crime reports; internal investigations of police officers sus-

pected of wrongdoing; efforts by a city to hire a developer for a multimillion-dollar project; and the settlement paid in a fatal university dormitory fire.

One recent high-profile case involved The Courier-Journal's effort to get access to records of donations to the University of Louisville Foundation and an academic center named for U.S. Sen. Mitch McConnell.

The newspaper filed suit in 2001 after U of L rebuffed requests for information on donors to the foundation. The newspaper has won several rulings, getting information that showed

donors to the McConnell Center for Political Leadership included tobacco, energy, defense and other companies whose business can be affected by legislation over which McConnell, R-Ky., can have great sway.

Larry Noble, executive director of a Washington-based watchdog group called the Center for Responsive Politics, said it's important for such information to be public because the companies may be making donations to try to win political favor — and doing so in a manner not covered by campaign finance and disclosure rules.

"The concern in these cases is whether or not the corporate contributors are hoping to gain some access or buy access" to a member of Congress, Noble said.

Citizens also take part in lawsuits over open records. One such case now in court involves efforts by retired lawyer Norman Lemme of Bullitt County to get records from the Kentucky Baptist Homes for Children, a church-affiliated organization that provides foster-care and other services and gets much of its money from the state, Lemme said.

After the organization moved to open a facility for troubled youths near Lemme's home, he won a ruling from the attorney general's office that the organization should disclose records to him.

But the organization sued in circuit court, maintaining it is a private agency exempt from the disclosure law.

The case could have wider impact because it involves the issue of when nongovernmental agencies should be considered public because they get public money.

Lemme is footing the bill to

pursue the case — an expensive hurdle that would keep many citizens from fighting records cases in court when agencies balk at disclosure, he said.

Mark Neikirk, managing editor of The Kentucky Post in Covington, said it can be costly and time-consuming to go to court over records, but that sometimes it's necessary as newspapers pursue information to keep the public informed.

"Court in my view is the last resort because of the time and expense, but there are going to be circumstances in which it needs to be done," Neikirk said.

### ELECTRONIC AGE

# E-mail pleas may go unanswered

By Jack Brammer  
Lexington Herald-Leader

LEXINGTON, Ky. — Under Kentucky law, there are three ways to request records of state and local government offices: by mail, fax or personal delivery.

You can ask for them by e-mail, but you may be disappointed.

Public agencies in Kentucky are not statutorily required to respond to open records requests sent by e-mail, said Amye Bensenhaver, an assistant attorney general who considers appeals of denied requests for open records.

"You can try it, but you may not get what you want," she said. "It's really left up to the individual state or local government agency to decide if they want to handle your open records requests electronically. They do not have to do that."

The statute requires that the request have a signature with the name printed below, and she said she isn't sure how that can be satisfied through e-mail.

As part of a statewide public records audit, Kentucky Press Association employees sent e-mails requesting public records

to the athletic and police departments and to foundations at the eight state universities: Louisville, Kentucky, Morehead State, Western Kentucky, Kentucky State, Eastern Kentucky, Murray State and Northern Kentucky.

Of those 24 requests, eight did not draw a response, one was denied and one was referred to a different office.

But four of the eight provided copies of their foundations' budgets.

Five of the eight police departments complied with the request for copies of assault reports on campus from July 1 through the date of the request in October 2004.

And five of the eight athletic departments furnished the requested copy of the athletic director's contract.

Some people are surprised to learn that even e-mail may be subject to open records requests, Bensenhaver said. Case law shows that electronic mail certainly is discoverable under actions brought against the government, she said.

States "are all over the map" in how they handle e-mail requests for open records, said Charles Davis, a journalism pro-

fessor at the University of Missouri and co-chairman of the National Freedom of Information Act Committee for the Society of Professional Journalists.

"Some states like Florida, North Carolina and New Jersey are very progressive," he said. "More and more states are allowing electronic requests for information."

Bensenhaver said she was not aware of any pending effort to try to update Kentucky's Open Records Act to require public agencies to deal electronically with records requests.

A pitfall in using e-mail to seek public records is that agencies do not always know if a person who sends the e-mail is a valid requester, Bensenhaver said.

To prevent computer viruses from spreading, practically every employee in the private or public sector is advised not to open an e-mail if the sender is not known.

A good idea when sending an e-mail request is to accompany it with a phone call, Bensenhaver said.

Dana Lear of the Kentucky Press Association news bureau in Frankfort contributed to this report.

### Sample open records request

John Smith, City Clerk  
Municipal Building  
Anytown, Kentucky 40999

Dear Mr. Smith:  
I respectfully request to inspect the following records:

1. All contracts that the city has with Home Wrecker Service;
  2. Any correspondence between the mayor and the Home Wrecker Service since January 1, 1990.
- If these documents are temporarily unavailable, please inform me of the earliest date when I may inspect them.

I also request a copy of the contract between the city and Home Wrecker Service dated October 14, 1992. I understand that I will have to pay the actual cost of making this copy.

Thank you for your attention to this request.

Sincerely,

Jane Q. Citizen

### Sample open records appeal

Attorney General  
Capitol Building  
Frankfort, Kentucky 40601

Re: Open Records Appeal

Dear Attorney General:

I am appealing the refusal of the city clerk of Anytown, Kentucky, to allow me to inspect records in his possession. A copy of my written request is attached. A copy of the clerk's response denying my request is also attached.

The clerk claims that the records are not open records because they are preliminary recommendations. I do not agree because the records I request to inspect are binding contracts between the city and a wrecker service.

Sincerely,

Jane Q. Citizen

### FREQUENT FILINGS

# Requests show how interests vary

By Henry S. Ackerman  
Associated Press

Requests for access to Kentucky's government records under the Open Records Act run the gamut of personal, social, political and business concerns.

People seek everything from police reports to divorce documents, from documentation on a city's payment of attorney's fees to records of sewer districts.

Thousands are submitted every year and to all levels of government — city, county, state and government-funded entities. Of those that are denied, only a small number are appealed.

"We see only the tip of the iceberg of all requests," said Amye Bensenhaver, an assistant attorney general whose office handles up to 350 appeals annually.

Here are some examples of the numbers and types of public information requests received by eight state and local government offices surveyed by The Associated Press:

► Department of Corrections — Inmates in Kentucky's prisons or their families asked for background documents on inmate criminal hearings and a wide range of other information in 13,835 open records requests last year, said Chris Gilligan, a spokesman for the Justice and Safety Cabinet.

Inmates appeal decisions more frequently than other people, according to the attorney general's office.

► Kentucky State Police — There were more than 990 requests during 2004, said Roger Wright, assistant general counsel in the Justice and Safety Cabinet, which handles requests to state police.

Many are for accident reports and blood alcohol levels on people arrested after traffic accidents or for driving under the influence. They also often come from product safety groups and from the Crime Victims Compensation Board, he said.

► Transportation Cabinet — Spokesman Mike Goins said the cabinet received more than 830 records requests in 2004. Many sought commercial drivers' histories and documents dealing with traffic signal timing. Half the requests come from private citizens, the rest from attorneys and the media, he said.

Attorneys frequently ask for data on trucking companies whose vehicles are involved in accidents. Goins said 99 percent of the requests are fulfilled.

► Department of Finance and Administration — Spokeswoman Jill Midkiff said 590 requests were received in 2004 through Dec. 17, and 74 of those were from the media. Many were for information on field

bidding for contracts and construction projects, largely from unsuccessful bidders, she said.

► Department of Fish and Wildlife Resources — Coal companies ask for the department's comments on Clean Water Act reports, while workers compensation officials use open records requests to make sure a worker out of work on a claim hasn't taken a license and killed a deer, said Scott Porter, the department's general counsel. Porter said the agency did not have a count of 2004 requests.

► Education Cabinet — Department spokesman Stan Lampe said there were 74 records requests received at the department level. The figures did not include numbers handled by universities, which respond to their own.

► Louisville Metro Police — Spokeswoman Alicia Smiley said the department receives from 600 to 800 requests annually, ranging from people seeking accident reports or neighborhood crime rates to those seeking tapes of 911 calls.

► Lexington-Fayette Urban Government — Lexington received about 3,700 requests last year, said Mike Sonner, a senior attorney for the city's department of law. Of those, about 1,500 were made to the police department, 900 to the Fire Department, and 300 to the Division of Community Corrections, he said.