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***Attorney General Advisory:
Changes to the Open Records Act and Open Meetings Act
following the 2022 Regular Session of the General Assembly***

This Advisory is intended to provide public agencies and the public with updates regarding legislative changes to the Open Records Act and Open Meetings Act following the 2022 Regular Session of the General Assembly.

Expiration of 2020 Senate Bill 150

In response to the COVID-19 pandemic, the General Assembly authorized several temporary changes to the Open Records Act and Open Meetings Act. The temporary changes included extending the time for a public agency's response to an open records request to ten days, permitting a public agency to deny in-person inspection of public records, and permitting more flexibility for video and audio conferencing of public meetings. *See, e.g.*, Senate Bill 150 (2020 Regular Session) ("2020 SB 150"). But during its 2022 Regular Session, the General Assembly passed Senate Joint Resolution 150 ("SJR 150") over the Governor's veto. That resolution ended the Governor's declaration of a state of emergency due to the COVID-19 pandemic. Accordingly, the declaration of a state of emergency on which 2020 SB 150 was premised has ended, and 2020 SB 150 no longer has any force or effect. No public agency should rely on the provisions of 2020 SB 150 when responding to open records requests or conducting open meetings.

Open Meetings Act

The 2022 General Assembly passed House Bill 453 ("HB 453"), which amends certain provisions of the Open Meetings Act. With the passage of HB 453, the General Assembly has made permanent, effective July 14, 2022, the option for a public agency to conduct a meeting using video-teleconferencing technology without providing a primary physical location for the public to attend and watch the meeting. KRS 61.826(2)(d). However, a public agency only has this discretion if all members attend virtually from separate physical locations. If two or more members are present at the same physical location, then the public agency **must** identify a primary physical location where

members of the public may observe the meeting. *Id.* If the public agency chooses to provide a primary physical location where the public may observe a video-teleconferenced meeting, or if two or more members will attend from the same physical location, then the public agency must precisely describe the primary physical location for public attendance in its notice of the video-teleconferenced meetings. *Id.*

Moreover, an agency that conducts a video teleconference meeting under KRS 61.862(2)(d), effective July 14, 2022, must include in its meeting notice “specific information on how any member of the public or media organization may view the meeting electronically.” KRS 61.826(2)(c).

During the pandemic, the General Assembly made one temporary change to allow public agencies to conduct open meetings using audio-teleconferencing equipment if video-teleconferencing equipment was unavailable. *See* 2020 SB 150. With the adoption of SJR 150, public agencies may no longer use audio-only teleconferencing equipment to conduct a virtual meeting. This change became effective on March 22, 2022, when SJR 150 was delivered to the Secretary of State. Going forward, under HB 453, public agencies may not conduct an open meeting using audio-only technology. An agency must now conduct a meeting using video-teleconferencing equipment such that all members of the public agency can be **seen and heard**.

Finally, HB 453 provides two new exceptions to the requirement that all public meetings be open to the public at all times. First, KRS 61.810(1)(n) now provides that both state and local public agencies may discuss in closed session the bidding and awarding of contracts issued under the Model Procurement Code “or other state or local law,” including the general bidding statute, KRS 424.260. Second, KRS 83A.150, the statute that creates the “city-manager” form of local government now provides that local governments under the “city-manager” plan may enter closed session no more than twice a year to conduct “a performance evaluation of the city manager.” KRS 83A.150(4)(d). Both new exceptions are effective and may be used beginning on July 14, 2022, the effective date of the legislation. *See* [Opinion of the Attorney General 22-04](#).

Open Records Act

The General Assembly did not amend any provisions of the Open Records Act this session. Note, however, that a public agency must respond to an open records request within **5 days of receipt** of the application, subject to limited exceptions. KRS 61.880(1).

Further Guidance

On or before June 20, 2022, the Office of the Attorney General will publish its update to “The Kentucky Open Records & Open Meetings Acts: A guide for the public and public agencies.” The guidance will address all changes made to the Acts during the 2022 General Assembly. The updated guidance will be published to the Attorney General’s website.