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***Attorney General Advisory:
Open Meetings Act and Open Records Act Changes during the COVID-19
public health emergency***

In response to the public health emergency caused by the rapid spread of COVID-19 and the state of emergency declared by the Governor, the Kentucky General Assembly passed [Senate Bill 150](#). Because of the emergency clause in Senate Bill 150, its terms are effective as of on March 30, 2020, the date on which the Governor signed the bill. Among other provisions, Section 8 makes several changes affecting public agencies subject to the Open Meetings Act and Open Records Act. The General Assembly has expressly authorized deviations from the standard provisions of both Acts for the duration of the declared state of emergency.

Open Records Act

Section 8(a) of Senate Bill 150 provides:

Notwithstanding KRS 61.872 and 61.880, a public agency shall respond to the request to inspect or receive copies of public records within 10 days of its receipt. A public agency may delay on-site inspection during the pendency of the state of emergency.

First, during this state of emergency, Section 8(a) means that a public agency “shall respond to the request to inspect or receive copies of public records within 10 days of its receipt.” Without the provisions of Senate Bill 150, a public agency subject to the Open Records Act was required to “determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request” and to thereafter “notify in writing the person making the request, within the three (3) day period, of its decision.” KRS 61.880(1); *see also* KRS 61.872(5).

Under Section 8(a) to Senate Bill 150, a public agency is now required to respond to the request “within 10 days of receipt.” Senate Bill 150 does not exempt

Saturdays, Sundays, or legal holidays from the ten-day deadline. Importantly, however, a deadline that falls on a Saturday, Sunday, or legal holiday is automatically continued to the next day that is not a Saturday, Sunday, or legal holiday as authorized by KRS 446.030(1).

Second, a public agency is expressly authorized to “delay on-site inspection during the pendency of the state of emergency.” Without the provisions of Senate Bill 150, a public agency subject to the Open Records Act would be required to permit a member of the public to inspect public records “[d]uring the regular office hours of the public agency,” despite the social distancing guidance from state and federal authorities. *See* KRS 61.872(3)(a).

Finally, all other provisions of the Act continue to apply.

Open Meetings Act

Section 8(b) of Senate Bill 150 provides:

Notwithstanding KRS 61.826, a public agency may conduct any meeting, including its regular meeting, by live audio or live video teleconference during the period of the state of emergency. A public agency acting under this paragraph shall:

1. Provide public notice, under subsections (3) to (5) of KRS 61.823, that the meeting is being conducted under this paragraph by live audio or video teleconference;
2. Conduct the meeting by:
 - a. Live video teleconference if the public agency has the technological capacity and availability to provide for live video teleconference; or
 - b. Live audio teleconference if the public agency does not have the technological capacity or availability to provide for a live video teleconference; and
3. Provide specific information on how any member of the public or media organization can access the meeting.

First, a public agency utilizing the provisions of Senate Bill 150 to hold a meeting—whether a regular, special, or emergency meeting—must meet the notice

requirements contained in Senate Bill 150. Senate Bill 150 incorporates the notice requirements of KRS 61.823(3), (4), and (5). These notice provisions require that the notice consist of the date, time, and place of the meeting and an agenda. While a regular meeting does not ordinarily require an agenda, Senate Bill 150 specifically incorporates such a requirement, perhaps in recognition of the abnormal means through which the meeting is occurring and to provide the public with a better understanding of the potential topics for consideration at the meeting. Senate Bill 150 does not, however, require a public agency to limit discussion and action at a regular meeting to items listed on the agenda (though such limitations continue to be required for a special or emergency meeting).

Second, even under Senate Bill 150, a public agency must utilize “live video teleconference” if the public agency “has the technological capacity and availability” to do so. Senate Bill 150 § 8(2)(a). If a public agency does not have the “technological capacity or availability to provide for a live video teleconference,” Senate Bill 150 authorizes the public agency to utilize a “live audio teleconference” to conduct its meeting. Senate Bill 150 § 8(2)(b).

Finally, except for permitting in-person attendance at the physical location of the meeting to the general public, other provisions of the Act continue to apply. For example, a public agency must continue to record minutes, KRS 61.835, and no person should be required to identify himself or herself to attend a public meeting (including a video teleconference or audio teleconference), KRS 61.840.