

# The Kentucky Open Records Act:

The Privacy Exception  
and  
What is a “Public Agency?”

Presented by:  
David S. Kaplan  
Frost Brown Todd LLC  
400 West Market Street  
32<sup>nd</sup> Floor  
Louisville, Kentucky 40202

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**I. The Privacy Exception to Disclosure of Open Records: Weighing Public versus Private Interests**

**A. The pro-disclosure bias of the Open Records Act**

The Kentucky Open Records Act is animated by the General Assembly's legislative finding that the "free and open examination of public records is in the public interest." KRS 61.871. The Act provides that "all public records shall be open for inspection by any person," except where a public record is specifically exempted from disclosure. KRS 61.872(1). Regarding the exceptions to disclosure, the Act requires that they be "strictly construed" even where disclosure would cause "inconvenience or embarrassment to public officials or others." KRS 61.871. The agency applying the exception carries the burden of proof that a public record is exempt from disclosure. KRS 61.882(3).

As noted by the Kentucky Supreme Court, these provisions exhibit a "general bias favoring disclosure" to advance the policies underlying the Act. *Kentucky Board of Examiners of Psychologists v. Courier-Journal*, Ky., 826 S.W.2d 324, 327 (1992). Nonetheless, the General Assembly has also expressly recognized that "while all government agency records are public records for the purposes of their management, not all these records are required to be open to public access, . . . some being exempt under KRS 61.878." KRS 61.8715. In other words, a court should not view the presumption in favor of disclosure as a conclusive presumption. The difficulty for citizens, agencies, and courts lies in determining whether a particular exception enumerated in KRS 61.878 applies to overcome the strong statutory presumption in favor of disclosure.

## **B. The privacy exception**

One of the most litigated exceptions to the general rule of open examination of public records is the privacy exception codified at KRS 61.878(1)(a). The privacy exception is the first among the twelve listed in KRS 61.878, leading the Kentucky Supreme Court to call it “the foremost exception to the disclosure rule.” *Kentucky Board of Examiners of Psychologists v. Courier-Journal*, Ky., 826 S.W.2d 324, 327 (1992). Its placement at the top of the list should come as no surprise given the premium our society and Anglo-American jurisprudence has always placed on personal privacy.

The Act specifically exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” KRS 61.878(1)(a). This language requires an agency seeking to withhold public records on privacy grounds to show (1) that the records contain “information of a personal nature” and (2) that the public disclosure of that personal information is “clearly unwarranted.” Thus, it is not sufficient to trigger the exception that disclosure of public records merely implicates the privacy interests of an individual to some degree. The resulting invasion of privacy must also be “clearly unwarranted” in order to override the general policy favoring disclosure.

The Act itself provides little guidance in determining what qualifies as “information of a personal nature” or how to resolve the clash between the general policy favoring disclosure and the privacy interests of individuals. However, the Kentucky appellate courts have provided some general guidance to

agencies charged with applying the exception to specific cases. These cases will be discussed below.

### **C. What is privacy?**

The Act protects from disclosure “information of a personal nature.” While the Act does not define “information of a personal nature” or “personal privacy,” Kentucky courts have frequently addressed the meaning of “privacy” in the tort context. In discussing the elements of an actionable tort for invasion of privacy, the Kentucky Supreme Court stated that “[t]he basis of the tort, while not subject to precise definition, may be best described as the right of every citizen to be ‘let’ alone. Private individuals have the right to live their lives without unwarranted interference by the public about matters with which the public is not necessarily concerned.” *McCall v. Courier-Journal*, Ky., 623 S.W.2d 882, 887 (1981). “However, the right is not absolute. The rule defining the extent of the right is based on the premise that the standard by which the act is measured is that of a reasonable man.” *Board of Education of Fayette County v. Lexington-Fayette Urban County Human Rights Commission*, Ky.App., 625 S.W.2d 109, 110 (1981) citing *Perry v. Moskins Stores, Inc.*, Ky., 249 S.W.2d 812 (1952). The Kentucky Supreme Court has extended these general understandings of the nature and scope of the right to privacy to the open records context for the purposes of determining whether certain public records implicate privacy interests and, if so, to what extent. See *Lexington-Fayette Urban County Government v. Lexington Herald-Leader Co.*, Ky., 941 S.W.2d 469, 473 (1997).

**D. The balancing test**

**1. *Kentucky Board of Examiners***

Perhaps the leading case in defining the contours of the privacy exception is *Kentucky Board of Examiners of Psychologists v. Courier-Journal*, Ky., 826 S.W.2d 324 (1992). *Board of Examiners* involved an attempt by a newspaper to obtain the full contents of a complaint file that was compiled during a Board investigation of a psychologist accused of sexual misconduct involving his patients. *Id.* at 325. These records included the psychologist's patient files on some of the alleged victims and the depositions of the complainants, the psychologist, and others. *Id.* The trial court and the Court of Appeals found that the Act required disclosure of the records.

In addressing the issue on appeal, the Supreme Court examined the plain language of the privacy exception in light of the policies underlying the Act. The Court first noted that the privacy exception “reflects a public interest in privacy, acknowledging that personal privacy is a legitimate concern and worthy of protection from invasion by unwarranted public scrutiny” *Id.* at 327. The Court then observed that the overall policy of the Act is one of open disclosure. The Court concluded that the only way to apply the privacy exception is by “comparative weighing of the antagonistic interests.” *Id.* Moreover, the outcome of this balancing test is “intrinsically situational, and can only be determined within a specific context.” *Id.* at 328.

Applying this test to the case at bar, the Court had no difficulty concluding that disclosure was clearly unwarranted under the circumstances. In doing so, the

Court placed an important gloss on the public interest side of the scale, explaining the nature of the public's interest in disclosure as follows:

The public's "right to know" under the Open Records Act is premised upon the public's right to expect its agencies properly to execute their statutory functions. In general, inspection of records may reveal whether public servants are indeed serving the public, and the policy of disclosure provides an impetus for an agency steadfastly to pursue the public good.

*Id.* at 328. The Court noted that records already made available by the Board provided sufficient information to determine whether the Board had performed its duties in connection with licensing, investigation, and discipline. *Id.* Because further disclosures did not appear necessary to evaluate whether the Board had fulfilled its public functions, the public interest in disclosure was not extremely weighty. *Id.*

On the other hand, the privacy interests at stake were significant. Because much of the information sought involved allegations of sexual misbehavior involving specific individuals, the Court found that the information was of a "very personal nature" and its disclosure "would constitute a serious invasion of personal privacy" of the complainants. *Id.* The Court therefore held that disclosure of the entire complaint file would be a "clearly unwarranted invasion of personal privacy" within the meaning of the Act. *Id.* at 328-29.

The opinion in *Board of Examiners* makes clear that the public interest to be weighed is a very specific one, namely, the interest in monitoring the activities of government. In other words, the Act does not favor openness for its own sake, or as a general principle, but rather, specifically to advance the cause of good government. This "watchdog" theory of open records is significant, because it

clearly circumscribes the public interest a court may consider when deciding whether an invasion of privacy is warranted under the circumstances.

## 2. *Zink v. Commonwealth*

These principles received further application and clarification in *Zink v. Commonwealth of Kentucky*, Ky.App., 902 S.W.2d 825 (1995). In *Zink*, an attorney sought the disclosure of “Employer’s First Report of Injury Forms” filed with the Department of Workers’ Claims. *Id.* at 827. These forms included personal information about the injured employees such as name, home address, phone number, age, and wage rate. *Id.* The attorney intended to use the information to target direct mail solicitations to potential clients. *Id.*

The Court observed that the forms at issue contained information “that touches upon the personal features of private lives.” *Id.* at 828. Specifically, individuals have some expectation of privacy with respect to their marital status, number of dependents, wage rate, social security number, home address, and telephone number. *Id.* Finding a privacy interest at stake, the Court turned its attention to the extent of the public interest in disclosure.

In examining the public interest at stake, the Court of Appeals followed in the footsteps of the Supreme Court in *Board of Examiners, supra*:

At its most basic level, the purpose of disclosure focuses on the citizens’ right to be informed as to what their government is doing. That purpose is not fostered however by disclosure of information about private lives that is accumulated in various government files that reveals little or nothing about an agency’s own conduct. The relevant public interest supporting disclosure in this instance is nominal at best.

*Id.* at 829. The Court refused to consider the broader public interest in disseminating information to injured workers regarding their legal rights, because that was not an open records-related purpose.<sup>1</sup> *Id.* Because disclosure of the information “would do little to further the citizens’ right to know what their government is doing and would not in any real way subject agency action to public scrutiny,” the public interest in such disclosure was “de minimus at best.” *Id.* Accordingly, the Court of Appeals held that the injured employees’ interest in maintaining the confidentiality of the information on the forms outweighed the negligible open records-related interest in disclosure. *Id.* at 829-30; accord *Hines v. Department of Treasury*, Ky.App., 2000-CA-000675 (March 30, 2001) (to be published) (Department could refuse to disclose to a commercial finder a list containing the names, addresses and specific monetary amounts of persons entitled to claim abandoned property).

### **3. *Herald-Leader Company***

In *Lexington-Fayette Urban County Government v. Lexington Herald-Leader Company*, Ky., 941 S.W.2d 469 (1997), the Supreme Court addressed the question whether a municipal government could refuse to provide unredacted copies of settlement agreements between the government and private parties settling claims against the police department. Two of the three agreements contained confidentiality clauses whereby the plaintiffs and their attorneys agreed not to disclose the settlement terms. *Id.* at 470. While the government disclosed a

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<sup>1</sup> The Court specifically noted that its analysis did not turn on the purposes for which the information was sought. *Id.* at 828. In other words, the fact that the requestor had a profit motive was irrelevant. The relevant inquiry was whether disclosure would advance an open records-related purpose.

list with the settlement amounts, it withheld information as to the recipients of these amounts and their injuries. *Id.*

In analyzing the applicability of the privacy exception, the Court stated that its “primary concern is the nature of the information which is the subject of the requested disclosure; whether it is the type of information about which the public would have little or no legitimate interest but which would be likely to cause personal embarrassment or humiliation.” *Id.* at 472. First, the Court found that the confidentiality clauses did not themselves create a right to privacy where none would otherwise exist. *Id.* The Court then asserted that the “settlement of litigation between private citizens and a government entity is a matter of legitimate public concern which the public is entitled to scrutinize.” *Id.* at 473. Because there was no evidence in the record indicating that the privacy interests of the plaintiffs (as opposed to the government) were implicated, the Court concluded that the articulated privacy interests were insufficient to overcome the public’s right of access to the information. *Id.*

The *Herald Leader* case is noteworthy for a couple of reasons. First, the Court appears to make the existence of a privacy interest at least in part an evidentiary question. Indeed, the Court noted that “[t]he record in this case gives no indication that significant privacy rights of the settling plaintiffs are implicated here.” *Id.* at 473. Therefore, while it was clear that public disclosure of the settlement agreements would reveal information about particular injuries suffered by particular individuals at the hands of the police, that fact proved insufficient by itself to trigger weighty privacy concerns. However, under the reasoning in *Zink*,

*supra*, which was cited approvingly by the Court, such personal information seems at least presumptively entitled to protection from non-disclosure.

Second, and relatedly, the opinion appears to place the onus on settling plaintiffs or their attorneys to include provisions in their settlement agreements specifically articulating the nature of their privacy interests and requesting notice from the agency if disclosure is sought so that they may intervene to prevent it. *Id.* at 473. No explanation is provided as to why the statutory scheme places these burdens on the citizens whose privacy rights are implicated, as opposed to the agency or the requestor.

Perhaps the outcome in this case is best explained as a result of the overriding public interest in receiving full information on the facts and circumstances which lead to the expenditure of tax dollars to settle litigation. *Cf. Courier Journal v. McDonald*, Ky., 524 S.W.2d 633, 635 (1974) (“Certainly the payment of city funds in settlement of a suit against the city and some of its officers, based on negligence or misconduct in the performance of a duty, is a matter with which the public has a substantial concern, against which little weight can be accorded to any desire of the plaintiff in that suit to keep secret the amount of money he received.”).

#### **4. *Bowling v. Brandenburg***

Last year, in *Bowling v. Brandenburg*, Ky.App., 2000 WL 266754 (March 10, 2000) (not yet final), the Kentucky Court of Appeals addressed the question whether a person named in a 911 call could require the disclosure to him of the audiotape record of the call. In this case, the tape was made when the requestor’s

grandson called the police to report that the requestor had threatened to kill his wife and other family members. *Id.* at \*1.

The Court first noted that the requestor had a right to receive the record pursuant to KRS 61.884 (person may have access to any record that mentions him or her by name) unless the privacy exception applied. *Id.* The Court then applied the balancing test to determine whether the 911 caller's right to privacy when seeking police assistance outweighed the public's right to monitor the conduct of a law enforcement agency. *Id.* at \*3. In weighing these competing interests, the Court noted that "[r]eleasing the tapes of 911 calls seeking police assistance, particularly in instances of domestic violence, would have a chilling effect on those who might otherwise seek assistance because they would become subject to . . . retaliation, harassment, or public ridicule." *Id.* The Court therefore concluded that the legitimate privacy interests of 911 callers should prevail.

The Court's reasoning is noteworthy, because its evaluation of the privacy interest at stake appears to have two components. First, the 911 caller has a privacy interest in avoiding the embarrassment incident to public disclosure of a domestic violence incident requiring police intervention. Second, this privacy interest is weightier due to the fact that fear of disclosure of their reports may deter callers from using 911. In other words, the Court factored into the privacy interest the negative social consequences of disclosure. Under this analysis, "information of a personal nature" includes information the disclosure of which could deter someone from conducting socially beneficial interactions with the government. This idea provides a functional explanation for why information

such as social security numbers, home addresses, and income should be treated as private information: if this type of information is subject to public disclosure, people may withhold it from agencies.

**E. Standing to challenge disclosures under *Beckham***

The Open Records Act clearly vests the agency upon which a public records request is made with the duty to apply the privacy exception in KRS 61.878(1)(a). Presumably, agency records custodians carry out this duty in accordance with the provisions of the Act. However, circumstances could arise in which a records custodian fails for some reason to discharge his or her duty to apply the privacy exception or, more likely, does not apply it to the satisfaction of third parties whose privacy interests are implicated. That was the situation encountered by the Court in *Beckham v. Board of Education of Jefferson County, Ky.*, 873 S.W.2d 575 (1994). In *Beckham*, employees of the Board of Education sought to prevent the Board from disclosing to the newspaper their personnel records, including their employment histories and grievances filed against them. *Id.* at 576.

Applying rules of statutory construction, the Court held that the plain language of KRS 61.882(1), authorizing a court to enforce the provisions of the Act on application of “any person,” afforded third parties standing to contest disclosure. *Id.* at 578. The Court rejected the view that the Act’s remedies applied only to those denied access to public records as inconsistent with the plain language of the Act and the nature of the privacy exception. *Id.* In reaching this conclusion, the court noted that “we have recognized the personal privacy

exclusion as an independent right of persons who were not even parties to the litigation and permitted their right to be asserted by the agency.” *Id.* Therefore, “it would be anomalous if we should disregard plain statutory language to conclude that an affected party who may possess a right to have documents excluded lacks standing to assert that right.” *Id.* at 579.

The Court’s recognition of the standing of third parties to prevent disclosure of public records on privacy grounds raises interesting questions. First, to what extent are third parties really in a position to bring such challenges? Sensitive information in government files may easily be disclosed without the knowledge, much less the consent, of private citizens. How are citizens to ensure they receive the notice necessary to enforce their rights? The Court’s subsequent decision in *Lexington Herald-Leader, supra*, provides a partial answer. There, the Court suggested that at least in the context of settlement agreements, it is the responsibility of plaintiffs to make advance arrangements for notice in the event that disclosure of private information is sought. *Id.*, 941 S.W.2d at 473. The logical extension of this principle is that private citizens who are aware that confidential information may exist in government files should also take steps to ensure they receive appropriate notice if disclosure is requested in the future.

Further questions flow from the Court’s explicit recognition that KRS 61.878(1)(a) creates an enforceable right to privacy. *Beckham*, 873 S.W.2d at 578-579; *Lexington Herald-Leader*, 941 S.W.2d at 473. The Court held that third parties have standing to enforce their rights. *Id.* at 578-79. Does it logically

follow that third parties have a cause of action for damages if private information is wrongfully disclosed without their knowledge or consent?

KRS 446.070 provides that “[a] person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation.” This statute provides a civil cause of action for persons who suffer damages as the result of the violation of a statute, provided that they are a member of the class of persons intended to be protected. *See, e.g., Davidson v. American Freightways, Inc.*, 25 S.W.3d 94 (2000). To the extent that a person has a right to privacy protected by KRS 61.878(1)(a), that person arguably has a cause of action for damages under KRS 446.070. Public agencies should take this possibility into account when making determinations under KRS 61.878(1)(a) and (4).

**F. Attorney General opinions applying the balancing test**

**1. In re: The Daily News Publishing Company/  
Department of Corrections, 00-ORD-206.**

Department was required to disclose criminal record data consisting of computer database entries including name, date of birth, race and sex, date of sentence, offense code, and sentence. The public’s interest in determining how effectively the Department was responding to the demands of a diverse prison population outweighed the “reduced expectation of privacy” of inmates.

**2. In re: The Courier-Journal and Louisville Times  
Company/Kentucky Judicial Form Retirement System,  
99-ORD-209.**

JFRS was required to disclose public record evidencing calculation of retired judge’s pension, with the exception of portion of record involving his private contributions to the plan. Judge’s negligible privacy interest in compensation related to his public employment was outweighed by the right of the public to scrutinize whether JFRS was properly allocating public funds.

**3. In re: Lexington Herald-Leader Company/Fayette County Public Schools, 99-ORD-73.**

FCPS was not required to disclose response cards filled out by parents who decided to transfer their children out of a middle school following low performance scores by the school on state assessment tests. Parents' and children's right to privacy regarding a "critical educational choice" outweighed public's need for this information, in light of fact that public already had sufficient information to evaluate the performance of the school.

**4. In re: The Kentucky Equirer/Legislative Research Commission, 98-ORD-92.**

LRC was required to disclose telephone records for calls to several telephone numbers originating from two specifically identified telephone lines in the Senate Republican leadership office and a Senator's Capitol Annex Senate office. While constituents have a privacy interest in contacting their legislators on a confidential basis, LRC had not carried its burden of proof that those interests were implicated by the specifically targeted records request in this case.

**5. In re: J. Robert Cowan/Cabinet for Families and Children, 98-ORD-45.**

Cabinet could not withhold documents pertaining to sexual harassment complaints made against Cabinet employees, including complaints or charging documents, documents reflecting final agency action, and investigative documents incorporated into final agency action. While some personal information of complainants possibly could be redacted prior to disclosure, a blanket policy of non-disclosure was not permissible.

**6. In re: Steve Rock/University of Kentucky, 97-ORD-85.**

University was required to disclose portions of records evidencing the source of all athletically-related outside income or benefits received by members of the athletic department, but not portions evidencing the amounts of those payments. While persons have a privacy interest in the amount of their income received from non-public sources, they do not have a privacy interest in the source of those payments.

**7. In re: James L. Thomerson/Lexington Fayette Urban County Government, 97-ORD-9.**

Urban-County Government was required to disclose public records evidencing tax payment delinquencies for twenty persons who were members of the metro council or candidates for that office. The public interest in monitoring who has failed to meet their legal obligations to pay taxes, and whether some

taxpayers are given preferential treatment, outweighs any privacy interests of delinquent taxpayers.

**8. In re: James L. Thomerson/Fayette County Schools, 96 ORD-232.**

FCPS was permitted to exclude the race and sex of employees on a list that included information concerning their names, position, tenure, school or office where employed, and salary. Persons have a privacy interest in the selective disclosure of their race and gender, and the purposes of the Open Records Act were served by an alternative list provided by the FCPS, which provided the numbers of employees including total numbers for each race and sex.

**9. In re: Royden Cullinan/City of Louisville, 96-ORD-220.**

City of Louisville was required to disclose visitor sign-in logs for City Hall and the Board of Aldermen. The public interest in monitoring access to public officials warranted disclosure absent a factual basis to excluded specific entries on privacy grounds. The City was ordered to produce an unedited copies of the logs, or identify particular entries properly excludable on privacy grounds, providing a sufficient justification for non-disclosure.

**10. In re: Bill Carr/Department of Agriculture, 96-ORD-51.**

Department was not required to disclose performance evaluations of public employees who received distinguished service awards. The employees' cognizable privacy interest in their evaluations outweighed the "conjectural" public interest supporting disclosure.

**11. In re: Louanne S. Love/Jefferson County Department of Animal Control, 95-ORD-153.**

Department was not required to disclose animal licensure records including owner's name and address and breed and age of dog or cat. Because the open records-related public interest in disclosure (in this case a commercial interest) was minimal, the privacy interests of owners would prevail.

## **II. What is a “Public Agency”**

### **A. Statutory definition**

The Kentucky Open Records Act provides as follows:

As used in KRS 61.872 to 61.884, unless the context requires otherwise:

(1) "Public agency" means:

- (a) Every state or local government officer;
- (b) Every state or local government department, division, bureau, board, commission, and authority;
- (c) Every state or local legislative board, commission, committee, and officer;
- (d) Every county and city governing body, council, school district board, special district board, and municipal corporation;
- (e) Every state or local court or judicial agency;
- (f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;
- (g) Any body created by state or local authority in any branch of government;
- (h) Any body which derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds;
- (i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof;
- (j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and
- (k) Any interagency body of two (2) or more public agencies where each public agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this subsection;

KRS 61.870(1). This definition of “public agency” clearly encompasses government entities such as public officials and state and local government agencies and departments. Some complexity may arise, however, due to the inclusion of entities which are not governmental in the traditional sense, but

which are so connected with the government as to be deemed “public agencies” for the purposes of the Open Records Act. In particular, subsections (h), (i), (j), and (k) of the definition describe entities that are deemed “public agencies” because they receive significant funding from, or are subject to the control of, government entities. The application of some of these provisions to specific entities is reported below.

**B. Application to particular entities**

**1. In re: Mark R. Chellgren/Kentucky Employers’ Mutual Insurance Company, 97-ORD-66.**

Kentucky Employers’ Mutual Insurance Authority was a “public agency” under subsection (i), because it was governed by a board of directors whose members are appointed by the Governor, subject to confirmation by the Senate.

**2. In re: Bob Hensley/Headley-Whitney Museum, Inc., 94-ORD-98.**

Museum was not a “public agency” because it was a non-profit corporation organized under KRS Chapter 273 and had not received at least 25% of its funds from a state or local authority. The record showed that it had received only 13% of its funds from state or local authority. *See also* 93-ORD-127 (Owensboro Museum of Fine Arts not a “public agency” where it was not created by state or local authority and only received 17-18% of its funds from local authorities).

**3. In re: Frank F. Chuppe/Governmental Services Corporation., 94-ORD-13.**

Governmental Services Corporation was a “public agency,” because it received 100% of its funds from the Kentucky Association of Counties-Kentucky League of Cities Workers’ Compensation Self Insurance Fund (the “Fund”), itself a “public agency.” The Fund was a “public agency” both because it was an interagency body of two or more public agencies (municipal governments) and it was created and regulated or controlled by the Workers’ Compensation Board. “We believe that the Act is expressly intended to require private, for-profit companies which do significant business with a public agency, and which receive 25% or more of their funds from that agency, to disclose all non-exempt records which relate to functions, activities, programs, or operations funded by the agency.”

**4. In re: Dick Moore/RiverPark Center, Inc., 94-ORD-1.**

RiverPark Center, Inc. (the “Corporation”) was not a “public agency” because it was a private, non-profit corporation with a 36 member board of directors that was not appointed or controlled by a government entity. However, the RiverPark Center, a City-owned performing arts center/auditorium that was managed by the Corporation under lease was deemed a “public agency” because it had received more than 25% of its funding from city and state sources.

**5. In re: G. Townsend Underhill III/University Diagnostic Imaging Associates, P.S.C., 93-ORD-90.**

University Diagnostic Imaging Associates, P.S.C., a private professional services corporation whose physician-employees rendered radiological services to patients, was not a “public agency” despite the fact that it received reimbursement for medical services through the Medicare and Medicaid programs. “In our view, the provision [KRS 61.870(1)(h)] was intended to insure that bodies which receive 25% or more of their funding from state or local authority funds could be held publicly accountable for those funds. It was not intended to subject to public scrutiny the records of private physicians who receive state or federal funds as reimbursement for their services.” *See also* 93-ORD-90 fn. 1 (“Medicare and Medicaid funds do not constitute ‘state or local authority funds’ in determining whether an entity receives 25% or more of its funds from public coffers.”)

**6. In re: Anna R. Mason/Kentucky Bar Association, 93-ORD-47.**

Kentucky Bar Association was not a “public agency” because it is created by the Supreme Court pursuant to Section 116 of the Kentucky Constitution and is accountable to the Court only.