

**Q&A from Citizen Effectiveness Training
March 2008**

1. Question: Does C-J publish legal notices online?

Answer: No. According to Ric Manning, Online Manager, the Courier-Journal does not currently publish legal notices online, but may in the future. Note: one can encourage them to do so by contacting Mr. Manning at ricman@courier-journal.com or by reaching him via 582.4240. Also note that the Courier-Journal has recently started publishing letters to the editor on line.

2. Question: Does Metro Call have to oblige with open records?

Answer: Yes, the records of Metro Call are subject to the Kentucky Open Records Act. Metro Call is an office within the Metro Louisville Cabinet for Neighborhoods, Parks, and Cultural Affairs. Metro Call records are subject to the ORA and any ORA request for Metro Call records should be directed to:

Marilyn Givan, Executive Administrator
Metro Call
400 S. 1st St.
Louisville, KY 40202

Depending on the nature of the record requested, there may be a privacy concern which the City could legitimately assert under the Open Records Act to withhold the names and contact information of callers, for example. However, information within the requested record(s) that does not raise a privacy concern (for example, the content of a complaint itself) should be provided by the City. You may want to specify in any Open Records Act request that you are not interested in the disclosure of the identify of any callers or email users, just the content of the complaint.

For other Metro Open Records Act requests, you send the letter/fax to the specific department. For more info, see www.louisvilleky.gov/your-government/openrecords.htm.

3. Question: What is the law on disclosing the use of a recording device in the state of KY?

Answer: An individual can secretly tape record a telephone conversation or a meeting in which she/he participates without disclosing to the other(s) that the conversation or discussion is being taped. Kentucky is known as a “one party consent” state, which means that the person doing the taping is the “one party who is consenting” and the other party neither has to be made aware of the

taping or has to consent (and this is acceptable under federal law). It is illegal, however, for a third party that is not a part of the telephone conversation or face to face meeting or discussion to tape the conversation.

4. Question: do state and local governments who administer programs that receive federal funding have to comply with the federal law on environmental assessments and environmental impact statements?

Answer: The general answer is “yes,” though each federal program has its differences and, therefore, each program has to be separately assessed. For example, the U.S. Dept. of Housing and Urban Development gives community development block grants to cities; this process is subject to a federal environmental review process under regulations found at 24 Code of Federal Regulations Part 58. A city like Louisville who receives such funds must then adopt its own equivalent environmental review program that meets the federal requirements and the city’s policy and requirements on environmental review are publicly available documents.

As another example, the U.S. Department of Agriculture (USDA) administers a program to certify “enterprise community” or “empowerment zones” in cities and rural areas in which businesses are entitled to low-interest loans or grants (example: the USDA granted such a designation to the proposed meat packing plant in the Irish Hill neighborhood). This funding requires the USDA to comply with the federal environmental assessment law, though it can let the city do the work, subject to federal oversight.

5. Question: Is a private corporation (for-profit or non-profit) subject to the federal Freedom of Information Act, the Kentucky Open Records Act, or the Kentucky Open Meetings Act if it receives public money?

Answer: Private corporations are not subject to the federal Freedom of Information Act even if they receive federal money in the form of low-interest loans or grants.

Private corporations (or boards or commissions) are subject to the Kentucky Open Records Act if more than 25% of the money they spend in Kentucky is from the state or a local government agency **OR** if the majority of their governing board is appointed by a state or local public agency or employee of a state or local public agency. Note that figuring out the 25% trigger can be difficult to determine for a for-profit corporation since their tax filings are not public records. Since charitable non-profit organizations must file publicly available Internal Revenue Service Form 990s (federal tax forms), it may be easier to determine the 25% trigger for charitable non-profit organizations. However, non-profit business organizations, like chambers of commerce, do not have to file publicly available federal tax forms.

Private corporations are subject to the **Kentucky Open Meetings Act** if the majority of their governing board is appointed by a state or local public agency or employee of a state or local public agency (note that private corporations which spend more than the 25% limit, and whose governing board is not appointed by a public agency, are not subject to the Open Meetings Act, only the Open Records Act).

A good overview of Kentucky Open Meetings and Open Records Act can be found at www.rcfp.org; scroll down the right-hand column of the home page until you get to "Tapping Officials' Secrets," click on this link; then click on "Browse" and it will take you to a page where you can click on "Kentucky" to access an article written by Dinsmore & Shohl, LLP.