Access to Public Documents in Kentucky

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ACCESS TO PUBLIC DOCUMENTS IN KENTUCKY

INTRODUCTION

The public's right to know what goes on in government holds a prominent place in a democratic society. At the heart of democratic theory lies the concept of individual participation in governmental decisions. The abhorrence of secrecy in government has permeated American political thought since the inception of our country. James Madison described the relationship between the public's right of access to information and a democratic society in the following words:

Knowledge will forever govern ignorance. And a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or tragedy, or perhaps both. [T]he right of freely examining public characters and measures, and of free communication thereof, is the only effectual guardian of every other right . . . .

While the public's right to know has long been recognized, the limitations placed on that right have varied with the times and the circumstances. In recent years, attention has focused on expansion of the right to examine the operations of government. Two notable expressions of this concern are the Freedom of Information Act, which provides broader citizen access to

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1 Quoted in H. Cross, The People's Right to Know 129 (1965) [hereinafter cited as Cross]. For a discussion of the constitutional right to information under the first amendment see Note, Access to Official Information: A Neglected Constitutional Right, 27 Ind. L. J. 209, 212 (1952).

2 Cross 12-13.

3 Administrative Procedure Act § 3, 5 U.S.C. § 552 (1971), as amended, (Supp. I, 1975). The "Freedom of Information Act" is technically an amendment to the public information section (§3) of the Administrative Procedure Act. It requires that each agency make provision for public access to all adjudicative opinions and orders, statements of policy and interpretations, staff manuals and instructions which may affect a member of the public, and indices to such material. 5 U.S.C. § 552(2). In addition, each agency is required to publish in the Federal Register a description of its organization and the places in which information may be obtained, its general method of channeling and processing all matters, and its procedural and substantive rules of general applicability. 5 U.S.C. § 552(1). Most importantly, this statute prescribes a procedure for enforcing its provisions in the courts and allows the assessment against
the records of federal agencies, and Kentucky's Open Meetings Law, often referred to as the "Sunshine Law," which opens the meetings of state and local government agencies to the public and the press. Both statutes clearly define the right of the individual to gain access to governmental information and prescribe procedures to effectively enforce that right.

In Kentucky, however, the public's right to view state and local governmental documents has failed to keep pace with these trends. Despite statutory recognition of this right, confusion concerning its scope and lack of an efficient enforcement procedure have precluded free exercise of the right to inspect public documents. The Kentucky Court of Appeals' recent decision in City of St. Matthews v. Voice of St. Matthews, Inc. has greatly clarified the scope of this right. Yet, the opinion contains ambiguities and fails to resolve the enforcement problem. Thus, it is appropriate to examine the current status of Kentucky law concerning access to public documents.

I. THE ST. MATTHEWS CASE AND THE SCOPE OF THE RIGHT TO INSPECT PUBLIC DOCUMENTS

In City of St. Matthews v. Voice of St. Matthews, Inc., the government of the petitioner's reasonable attorney's fees if the request for examination substantially prevails. 5 U.S.C. § 552(2).

4 Ky. Rev. Stat. §§ 61.805 et seq. (Supp. 1974) [hereinafter cited as KRS]. The "Sunshine Law" allows any member of the public or press to attend all meetings of public agencies, committees, and subcommittees except in specifically enumerated circumstances. It also stipulates that regular meetings must be scheduled and that such schedules must be available to the public. The statute establishes strict guidelines for giving notice of special meetings. To insure compliance, formal actions taken at meetings not in substantial compliance with these requirements are deemed voidable, and any member of the public agency attending such meetings is subject to a fine of $100.

5 KRS § 171.650 (1971). This statute provides:
Unless otherwise provided by law, all papers, books, and other records of any matters required by law or administrative rule to be kept by any agency, and all records arising from the exercise of functions authorized thereby, are public records and shall be open to inspection by any interested person subject to reasonable rules as to time and place of inspection established under KRS 12.080. A certified copy of any public record, subject to any such rules in effect, shall be furnished by the custodian thereof, to any person requesting it, upon payment of such reasonable fee therefore as may be prescribed by law or by administrative rule.

6 519 S.W.2d 811 (Ky. 1974).

7 Id.
Court of Appeals significantly modified the Kentucky law governing citizen access to public records. The lower court had rendered a judgment ordering city officials to allow a local newspaper to inspect various documents on file. The Court of Appeals remanded the case with instructions redefining the conditions under which access to such information should be granted. In so doing, the Court explicitly abandoned the restrictive common law "special interest" rule and formulated a three-part test for determining whether access to the public records in issue should be allowed. Under the Court's approach, it must first be determined that the document in question is in fact "public." Second, the person seeking access must prove that he has a "legitimate purpose" for viewing the record. Third, the court must balance the public policy favoring free access to governmental information against any countervailing policy considerations which may exist in the particular case. Moreover, in applying this test, once the requisite "purpose" or "interest" has been shown by the petitioner, the custodian of the record bears the burden of justifying his refusal to allow inspection. The importance of the Court's new approach necessitates an in-depth analysis of each aspect of this three-part test.

A. The Meaning of "Public Record"

The Kentucky access-to-documents statute, Kentucky Revised Statutes § 171.650 [hereinafter KRS], applies only to "public records." Accordingly, under the statute, the first inquiry is whether the record in question is "public" in nature. It is apparent, therefore, that the meaning attached to the term "public record" is of great significance.

Under KRS § 171.650, "... all papers, books, and other records of any matters required by law or administrative rule to be kept by any agency, and all records arising from the exercise of functions authorized thereby, are public records ... ." In St. Matthews, the Court indicated its willingness...
to give this language an expansive interpretation by stating: "Ordinarily it would appear to be beyond cavil that all records maintained by the state, county, or municipal government as evidence of the manner in which the business of that unit of government has been conducted are public records." However, the Court qualified this sweeping definition by recognizing that there may be exceptions to this general presumption and by declining to do more than identify examples of such exceptions. Thus, although the decision "may," as the Court noted, "serve to focus attention upon the question of what constitutes a public record," the Court's definition offers little assistance in answering that question.

Two approaches have been developed in other jurisdictions to determine which governmental records should be designated as "public." The first approach considers only the nature of the proceedings recorded. The primary issue is whether the particular function of the agency to which the document pertains was "public" or "private" in nature. Thus, for example, it has been held that records of preliminary proceedings are not "public records" because the proceedings did not reach a final determination and, therefore, are not of a public nature.

The second approach concentrates on the relationship of the agency in custody of the record to the government. In an

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12 519 S.W.2d 811, 816 (Ky. 1974).
13 Id. With regard to such exceptions, the Court stated:
   We note that accident reports are made confidential for use by the city by virtue of KRS 189.630, and it appears likely that it would not be in the public interest to disclose the details of some police investigations prematurely for otherwise the purpose of the investigations might be thwarted.
   We also think that part of the judgment which grants the right to inspect all tax records is overly broad. The city contends that information contained in occupational tax returns is of a confidential nature, the disclosure of which would give competitive advantage to others engaged in a like occupation. There may be other tax records, not specifically called to our attention by this record, which would be exempt from inspection upon proper consideration. KRS 131.190 is indicative of some legislative policy in this regard.
14 Id.
illustrative case,17 a New York petitioner was denied access to certain documents held by the city bridge and tunnel authority. The court reasoned that, despite the city's delegation of public functions to the authority, a public benefit corporation, it was not an arm of the municipal government.18

Neither of these approaches is entirely satisfactory because each possesses the inherent potential for abuse. The court's determination is necessarily dependent upon either the particular governmental structure or the agency's classification of its own proceedings. Thus, an agency can shield many documents from public inspection by arbitrarily designating certain proceedings as nonpublic or by delegating certain functions to quasi-governmental units. This deficiency could be overcome by adoption of the broad definition of public records stated in St. Matthews, but without the Court's qualifying language. This would require that any denial of access to governmental papers be based on compelling policy reasons rather than on a technical definition. The designation of a public policy as "compelling" would require a careful balancing of the two remaining aspects of the St. Matthews test.

B. The Requirement of an "Interest"

In accordance with the statutory reference to "inspection by any interested person,"19 the Court held in St. Matthews that an applicant must show a sufficient "interest" in order to gain access to public documents. However, the Court's definition of the requisite interest as "a wholesome public interest or a legitimate private interest"20 represents a significant departure from the restrictive interest requirements of the past.

Access to public documents was severely limited by the
early common law. The general rule allowed inspection only with the consent of the Crown. The English courts, however, recognized a "special interest" exception to this rule, by virtue of which the petitioner was granted access to the records if he could show that it was necessary to examine them in order to maintain or defend a legal action. The majority of American courts, interpreting this exception to preclude inspection without a litigation interest, have rejected the common law rule.

Kentucky has been cited as following the restrictive "special interest" rule. However, a careful study of the Kentucky cases in this area reveals that if Kentucky has followed this rule, it has done so only in dictum. Of the five Kentucky cases other than St. Matthews involving access to public records, only three have dealt with the interest issue. Motch v. City of Middlesboro involved a group of citizens who sought to inspect the records of the city merely to ascertain its financial status. The Court found that under a statute the records of the city were public and subject to inspection. Without discussion of the absence of a litigation interest, the petitioners were granted a writ of mandamus allowing them to audit the city's books. Fayette County v. Martin acknowledged acceptance

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21 Cross 25. See Fayette County v. Martin, 130 S.W.2d 838, 843 (Ky. 1939); Shelby County v. Memphis Abstract Co., 203 S.W. 339, 340 (Tenn. 1918).
22 Campbell, Public Access to Government Documents, 41 AUSTL. L.J. 73, 77 (1967). The basis for the restrictive common law rule can be attributed to the desire of the Royalty to protect themselves from rivals and to the medieval propensity to view governmental papers in strict proprietary terms.
23 Cross 25-26. See Nowack v. Fuller, 219 N. W. 749, 750-51 (Mich. 1928). It has been suggested that the litigation interest rule was not exclusionary but merely one instance in which access would be granted. Comment, Inspection of Public Records, 11 U. KAN. L. REV. 157, 159 (1962).
24 See generally Cross.
25 Id. at 55-56.
27 Courier Journal & Louisville Times Co. v. McDonald, 524 S.W.2d 633 (Ky. 1974); Courier-Journal & Louisville Times Co. v. Curtis, 335 S.W.2d 934 (Ky. 1959), cert. denied, 364 U.S. 910 (1960); Fayette County v. Martin, 130 S.W.2d 838 (Ky. 1939); Motch v. City of Middlesboro, 47 S.W.2d 56 (Ky. 1932); Barrickman v. Lyman, 157 S.W. 924 (Ky. 1913).

Barrickman v. Lyman did not examine the interest requirement issue because the petitioner satisfied the common law test by maintaining a suit against the city. Courier Journal & Louisville Times Co. v. McDonald was resolved solely on a standing issue.
28 47 S.W.2d 56 (Ky. 1932).
29 Id. at 57. The statute involved was KY. STAT. § 3255, which now appears as KRS
of the litigation interest rule but turned on a statute prohibiting disclosure of the information in question.\textsuperscript{31} In \textit{Courier-Journal \& Louisville Times Co. v. Curtis},\textsuperscript{32} the Court's decision, although "based squarely upon the common-law rule, \ldots engrafted some new concepts upon that rule" by creating a presumption that the requisite interest existed with regard to specified classes of documents.\textsuperscript{33}

In \textit{St. Matthews} the Court of Appeals made its position clear by explicitly abandoning the litigation interest rule:

We cannot find any valid basis in our society for the imposition of the requirement of the interest stated in the common law rule as a prerequisite to the right to inspect public records. The rule originated under a monarchic form of government in which the people were subjects of the Crown. It seems to us that a rule which had its genesis under that type of government is likely to be ill-suited for application in a democratic society where the government is administered by elected representatives of the people. \ldots We consider the

\begin{footnotes}
\footnotetext[31]{§ 85.340 and provides: "All records of the city are public records, and at all reasonable times shall be open for inspection by the public. Copies of such records, attested by the lawful custodian, shall be competent evidence in all courts."}
\footnotetext[32]{130 S.W.2d 838 (Ky. 1939).}
\footnotetext[33]{\textit{Id.} at 844. In this case Fayette County was seeking access to certain tax records filed with the state Commissioner of Revenue. The Court denied access because, \textit{inter alia}, counties are not included within the statutory language authorizing the Kentucky Tax Commission to grant any "city" the right to inspect tax records on a confidential basis. Since the county was not within this exception to the statutory prohibition on disclosure of information contained in tax schedules and returns, the county officials were denied access without regard to any showing of interest. See KRS § 131.190 (1970).}
\footnotetext[34]{335 S.W.2d 934 (Ky. 1959), \textit{cert. denied}, 364 U.S. 910 (1960).}
\footnotetext[35]{City of St. Matthews v. Voice of St. Matthews, Inc., 519 S.W.2d 811, 813, (1974). The Court used the following language in \textit{Curtis} to create the presumption: Generally the interest required under the rule must be alleged and proven. However, in order to effectuate the notice-giving purpose of various recording acts such interest shall hereafter be presumed as to the following records:

(1) Records of all papers, documents and instruments required or permitted by statute to be recorded, or noted of record, in books provided by public funds for that purpose.

(2) All financial records required by statute to be kept in books so provided.

The presumption shall govern where papers, documents and instruments are required or permitted by statute to be recorded in such books and have been lodged for that purpose but unrecorded.}
\end{footnotes}
necessity of showing an interest such as would enable a person to maintain or defend a lawsuit as a prerequisite to his right to inspect a public record to be an unwarranted impediment to the right of people generally to acquire information concerning the operation of their government . . . .

Two recent actions by the Kentucky General Assembly may have influenced the Court's decision to at last dispose of the litigation interest requirement. The Court noted the passage of the "Sunshine Law" as an indication of legislative policy favoring free access to governmental information. Perhaps more influential, although not mentioned, was a proposed amendment to KRS § 171.650 which passed the 1974 General Assembly but was vetoed after adjournment. The amendment would have broadened the scope of the statute from "inspection by any interested person" to "inspection by any member of the public." This amendment would also have brought the Kentucky law into line with the language contained in the statutes of most other jurisdictions. This demonstration of

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34 519 S.W.2d 811, 815 (Ky. 1974).
36 519 S.W.2d 811, 816 (Ky. 1974).
37 House Bill 22 was passed by the 1974 General Assembly to amend KRS § 171.650 as follows:

Unless otherwise provided by law or federal regulation, all papers, books, and other records of any matter required by law or administrative rule to be kept by any agency, of the state, its counties, cities, school districts and other political subdivisions which receive funds derived from public taxation, and all records arising from the exercise of functions (authorized thereby,) by these agencies are public records and shall be open to inspection by any member of the public subject to reasonable rules as to time and place of inspection (established under KRS 12.080). A certified copy of any public records, subject to any such rules in effect, shall be furnished by the custodian thereof to any member of the public requesting it, upon payment of such reasonable fee therefore as may be prescribed by law or by administrative rule.

S. JOUR. 769 (1974) (final form as passed) (language in parentheses was to be deleted from statute; portions italicized were to be inserted).

The bill passed the House with a 92-2 majority, 1 H.R. JOUR. 258 (1974) and the Senate with a 25-1 majority, S. JOUR. 1643 (1974). It was subsequently vetoed April 2, 1974 (on record in the office of the Secretary of State).

38 KRS § 171.650 (1971). See note 5 supra.
39 House Bill 22, supra note 37.
40 The right of inspection has been granted to taxpayers (LA. REV. STAT. § 44:31 (1950); OKLA. STAT. ANN. tit. 51, § 24 (1962)), citizens (ME. REV. STAT. ANN. tit. 1, § 405 (1964); TENN. CODE ANN. § 15-304 (1973)), and the general public (Administrative
legislative dissatisfaction with the interest requirement may well have provided the impetus for the Court’s rejection of the litigation interest requirement in *St. Matthews*.

The statutory limitation of the right to inspect to “any interested person” mandated that the Court retain some type of interest requirement. Therefore, the rigid common law rule was replaced in *St. Matthews* with the requirement that “the right to demand inspection of public records must be premised upon a purpose which tends to advance or further a wholesome public interest or a legitimate private interest.”\(^4\) The opinion gives little guidance concerning the manner in which this test is to be interpreted and applied.\(^4\) Without such guidance, vague terms such as “wholesome” and “legitimate” are not susceptible to clear definition. Thus, lower courts faced with future cases involving access to public documents will be forced to rely upon their moral judgment to determine the sufficiency and appropriateness of the interest advanced by the petitioner. Unfortunately, it seems inevitable that this will result in disparity among the circuit courts in the balancing of the applicant’s interest and the countervailing public policies.

C. *The Balancing of Countervailing Policy Considerations*

The final test for determining if disclosure is warranted involves balancing the policy favoring free access to information and the public policies against disclosure in certain cases.\(^4\) Obviously, some records contain information which, for various reasons, should not be divulged to the public at large. The court must satisfy itself, after weighing the competing policies, that release of the document is in the public interest.

In *St. Matthews*, the Court of Appeals placed the burden

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\(^1\) 519 S.W.2d 811, 815 (Ky. 1974).

\(^2\) The Court did state that purposes such as “idle curiosity” and “public scandal” would not be satisfactory interests. *Id.* It might be asked whether an interest in exposing governmental corruption would be considered a “wholesome” interest or merely an interest in public scandal.

\(^3\) *Id.* at 815.

of justifying a denial of access to a record on the custodian of the record, rather than on the petitioner.\textsuperscript{44} In other words, once the petitioner has established that he has a "wholesome" and "legitimate" purpose for viewing the records, the custodian must prove that a valid public interest in confidentiality outweighs the individual's interest in disclosure.

The Kentucky General Assembly has designated several areas in which the need for confidentiality must take precedence by specifically excluding records in these areas from public inspection. When access to any of these records is sought, the issue is whether the particular item is encompassed by the statute. Examples of such exclusions are documents pertaining to adoption proceedings,\textsuperscript{45} dissolutions of marriage,\textsuperscript{46} annulment actions,\textsuperscript{47} illegitimate births,\textsuperscript{48} paternity actions,\textsuperscript{49} and juvenile court proceedings.\textsuperscript{50} As evidenced by this listing, the statutes generally exclude documents containing highly personal information, disclosure of which would greatly infringe on various individuals' right to privacy.

Certainly, there are records outside the statutory exclusions whose publication would be undesirable. The major considerations that weigh against disclosure may be grouped into four main categories.\textsuperscript{51} First, the right of privacy must be preserved. Extensive personal data is collected and stored by various units of government. Evaluations of character, results of aptitude tests, and information on family background are prime examples of such sensitive data.\textsuperscript{52} A recent legislative

\textsuperscript{44} Id. See also Egan v. Board of Water Supply, 98 N.E. 467 (N.Y. 1912).
\textsuperscript{45} KRS § 199.570 (1971).
\textsuperscript{46} KRS §§ 213.320-.340 (Supp. 1974).
\textsuperscript{47} KRS § 213.340 (1971).
\textsuperscript{48} KRS § 213.050 (Supp. 1974).
\textsuperscript{49} KRS § 406.035 (Supp. 1974).
\textsuperscript{50} KRS § 208.340 (1971). Some other specifically excluded records are those of the Handicapped Children's Commission (KRS § 200.490), certain records of the Human Resources Commission (KRS § 195.060), estate tax records (KRS § 140.170), public assistance records (KRS § 205.175), records of inmates in state mental institutions (KRS §§ 210.230-.235), and the Fire Prevention Commission's investigative reports (KRS § 227.260).
\textsuperscript{51} Campbell, supra note 22, at 76.
\textsuperscript{52} Other personal information in government files can have a dramatic detrimental effect on the people involved. See, e.g., Patterson v. Tribune Co., 146 So. 2d 623 (Fla. 1962) (denying access to records naming persons as committed narcotics addicts).
recognition of this concern is the enactment of the Privacy Act of 1974, which gives an individual the right to learn what information concerning him is on file with federal government units and specifies strict conditions under which such personal data may be revealed to third parties. The second category concerns the state’s duty to protect property rights and fair competition. For instance, trade secrets warrant protection from potential competitors. The propriety of excluding such records from public inspection is demonstrated by protective provisions in the Freedom of Information Act. The third category acknowledges that the confidentiality of certain records may be essential to the fulfillment of agency objectives. This class includes premature disclosure of reports pertaining to law enforcement activities, such as police investigations. If release of such information would defeat the purpose for which the agency was established, access should be allowed only after careful consideration. However, there is no reason why reports of investigations which have long since been closed should be

Also of interest is a recent law passed by the Tennessee legislature restricting the disclosure of records kept on state hospital patients and personal records kept on students. TENN. CODE ANN. § 15-305 (Supp. 1974). Information contained in tax returns might also be included in this category. See City of St. Matthews v. Voice of St. Matthews, Inc., 519 S.W.2d 811, 816 (1974); KRS § 131.190 (1974 Supp.).


5 For example, concern that disclosure of certain information contained in occupational tax returns “would give competitive advantage to others engaged in a like occupation” surfaced in St. Matthews. 519 S.W.2d at 816.


5 In St. Matthews, the Court stated: “[I]t appears likely that it would not be in the public interest to disclose the details of some police investigations prematurely for otherwise the purpose of the investigations might be thwarted.” 519 S.W.2d at 816.

This problem is dealt with in the Freedom of Information Act in the following manner:

(b) [T]his section does not apply to matters that are . . .

(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel.

kept confidential.\textsuperscript{57} Finally, certain volunteered information should not be made public.\textsuperscript{58} Much vital information, including statistical data and informants' statements, is received conditioned upon the promise of confidentiality. Breach of such agreements could serve to deprive the government of essential intelligence sources.

After identifying the petitioner's interest and the countervailing public policies, \textit{St. Matthews} requires that these considerations be weighed against one another.\textsuperscript{59} This balancing of interests is both the final and most important step in the \textit{St. Matthews} test. It, like the other factors set out in the decision, depends upon the sound judgment of the trial court. Consequently, although the Court of Appeals has laid the foundation for an expansion of the public's right to examine government records, the final limits of that right will be determined by the manner in which judicial discretion is exercised at the trial court level.

II. \textbf{ENFORCEMENT OF THE RIGHT TO INSPECT PUBLIC RECORDS}

In Kentucky, as in most states,\textsuperscript{60} the only available means of enforcing the right to inspect public documents is a petition for a writ of mandamus.\textsuperscript{61} Although this common law writ is deemed an extraordinary remedy and discretionary in character,\textsuperscript{62} it seems unlikely that a petitioner who satisfies the requirements of \textit{St. Matthews} will be denied the order. Nevertheless, there are serious practical problems which render mandamus inadequate as an enforcement procedure. Petitioning the court for mandamus can involve prohibitive costs and delays,


\textsuperscript{58} Campbell, \textit{supra} note 22, at 77.

\textsuperscript{59} 519 S.W.2d 811, 815 (Ky. 1974).

\textsuperscript{51} Cross 30-31. \textit{See generally} Annot., 169 A.L.R. 653 (1947); Annot., 60 A.L.R. 1356 (1929). Most public records statutes appear to give an absolute right to inspect. However, due to the discretionary character of the mandamus procedure, "the right of inspection of most public records is 'absolute in theory' and 'qualified in practice.'" \textit{State ex rel. Wellford v. Williams, 75 S.W. 948, 958 (Tenn. 1903).}

\textsuperscript{60} \textit{See}, e.g., Motch v. City of Middlesboro, 47 S.W.2d 56 (Ky. 1939).

\textsuperscript{61} 52 Am. Jur. 2d Mandamus §§ 5-6 (1970).
especially if the decision is appealed. The attorney’s fees and court costs alone would preclude the average taxpayer from pursuing the matter. Additionally, a petitioner with the necessary resources may be denied effective access to documents due to excessive delay created by overcrowded court dockets. In view of these inherent deficiencies in the mandamus procedure, it would be advantageous for the Kentucky legislature to develop an alternative method of enforcing the right to view public records.

The statutes of other jurisdictions provide models for more effective procedures to enforce the right of access to public documents. Two viable approaches have been developed to reduce the costs of enforcement proceedings. The first approach, implemented in the Freedom of Information Act, provides for the assessment of attorney’s fees and court costs against the government when access to documents has been wrongfully denied. The availability of such a recovery may be enhanced by requiring only that the petitioner “substantially prevail” in court. The second cost-reducing alternative is the development of a simple administrative procedure for enforcement. The Oregon public record inspection statute provides an excellent example of this type of scheme. This statute permits persons who have been denied access to public documents to make a request for production through the state attorney general or the district attorney. The administrative decision may be appealed to the courts and, if erroneous, attorney’s fees may be assessed against the state.

The prompt disposition of requests for records has been a major goal of most modern access-to-documents statutes. The

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64 Id. "The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed."
66 ORS §§ 192.450-.460 (1973). However, if the documents are held by an elected official, the original petition must be submitted to the appropriate circuit court. ORS § 192.480 (1973). A form for the petition is conveniently provided in the statutes. ORS § 192.470 (1973).
most direct means is exemplified by the Oregon requirement that a petition be administratively granted or denied within three business days after receipt. The expedition of a final judicial determination is also essential. This has been accomplished by assigning a request for access to documents priority over most other matters on the court’s docket.

Delay and costs to both the petitioner and the state have been reduced by the imposition of punitive measures against custodians of public records who wrongfully impede free access to them. The possibility of such sanctions requires custodians to base any denial of access upon valid public policy rather than mere intractability. The punitive measures currently employed range from a moderate fine in Alabama to the referral of the offender to a disciplinary body under the Freedom of Information Act. All of these measures have experienced at least limited success and should be considered by Kentucky for improvement of the current enforcement procedure.

CONCLUSION

In Kentucky, exercise of the right to inspect public documents has been frustrated by uncertainty concerning the scope of the right and lack of effective enforcement procedures. The Court of Appeals, in City of St. Matthews v. Voice of St. Matthews, Inc., has done much to remove the first of these obstacles. The Court’s liberalized interest requirement, in conjunction with its new three-step approach for determining whether to grant access and its allocation of the burden of justifying a denial of access to the custodian of the record, should serve to

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69 5 U.S.C. § 552(a)(4)(D) (1964), as amended, (Supp. I, 1975); ORS § 192.490(2) (1973): "Except as to causes the court considers of greater importance, proceedings arising under O.R.S. 192.450 to 192.480 take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way."
70 ALA. CODE tit. 41, § 146 (1959).
71 5 U.S.C. § 552(a)(4)(F) (1984), as amended, (Supp. I, 1975). If the court issues a written decision that the person in charge of the records in question acted arbitrarily and capriciously in denying inspection, the Civil Service Commission is to initiate proceedings to determine if disciplinary actions are needed. The Commission's recommendation is forwarded to the agency involved for corrective action.
72 519 S.W.2d 811 (Ky. 1974).
make the right to examine public records more meaningful for Kentucky citizens.

Despite these advances, further changes are needed in order to promote the policy of citizen access to governmental information. More precise guidelines for application of the Court's new approach, as well as more effective enforcement procedures, must be developed. To avoid wholesale exclusion of governmental documents through a technical definition of "public record," all records generated by governmental units should be considered "public." Access to a public record should be denied only when the interests of the petitioner and the policy of encouraging an informed citizenry are outweighed by policies favoring confidentiality. Given the amount of discretion inherent in such a balancing process, the parameters of the right to inspect public records will be largely determined by the judiciary, particularly the trial courts.

The mandamus proceeding, with its concomitant delays and costs, is inadequate as an enforcement device for persons denied access to public records. A detailed administrative remedy, including reasonable sanctions against government officials who wrongfully withhold information, would provide more effective and efficient enforcement of the right to access. The process could be further expedited by providing priority to judicial review with the allowance of attorney's fees and court costs to a prevailing applicant.

In a democracy every citizen has the right to be informed concerning the operation of his government. This basic right can be effected only through laws guarantying citizens access to governmental records. The St. Matthews decision is a step toward providing that guaranty. The judiciary and the legislature must take further steps, however, in order to fully guaranty the right of access to public documents.

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