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**22-ORD-077**

April 28, 2022

In re: James Barnett/Kentucky State Police

**Summary:** The Kentucky State Police (“KSP”) did not violate the Open Records Act (“the Act”) when it redacted the birth dates of individuals contained within its Uniform Citation database.

***Open Records Decision***

James Barnett (“the Appellant”) submitted a request to KSP to obtain copies of its Uniform Citation database (“the database”).<sup>1</sup> KSP responded that it would comply with the Appellant’s request, but that KSP would redact from the database social security numbers, birth dates, addresses, phone numbers, and the names of juveniles under KRS 61.878(1)(a). KSP stated it would not redact the names of adults from the records.<sup>2</sup> The Appellant objected to KSP redacting the birth dates appearing in the records, but KSP maintained that such information could be “categorically redacted” under the Kentucky Supreme Court’s decision in *Kentucky New Era, Inc., v. City of Hopkinsville*, 415 S.W.3d 76 (Ky. 2012). This appeal followed.

KRS 61.878(1)(a) exempts from inspection “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy[.]” In reviewing an agency’s denial of an open records request based on the personal privacy

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<sup>1</sup> For context, KSP created this database as a result of a decision by the Kentucky Court of Appeals. See *Department of Kentucky State Police v. Courier-Journal*, 601 S.W.3d 501 (Ky. App. 2020).

<sup>2</sup> Although the Appellant argues on appeal that KSP should not redact the names of individuals appearing in the database, KSP never stated that it would redact those names. The only names KSP stated that it would redact were the names of juveniles, which the Appellant agrees is proper.

exemption, the courts and this Office balance the public's right to know what is happening within government against the personal privacy interest at stake in the record. *See Zink v. Commonwealth, Dept. of Workers' Claims*, 902 S.W.2d 825, 828 (Ky. App. 1994). However, the Kentucky Supreme Court has held that certain categories of information about private individuals provide minimal insight into governmental affairs and may be categorically redacted under KRS 61.878(1)(a). *Kentucky New Era, Inc.*, 415 S.W.3d at 89. The "categorical" rule announced in *Kentucky New Era* did not replace the typical balancing test that Kentucky courts use when determining whether the privacy interest at stake outweighs the public's right to know what the government is doing. Rather, the Court in *Kentucky New Era* recognized that the Act must be "workable," and thus, "with respect to discrete types of information routinely included in an agency's records and routinely implicating similar grounds for exemption, the agency need not undertake an ad hoc analysis of the exemption's application to such information in each instance, but may apply a categorical rule." *Id.*

The Court in *Kentucky New Era* held that the privacy interest in "address, phone number, social security number, or . . . *other forms of personal information* . . . will almost always be substantial, and the public interest in disclosure rarely so." *Id.* (emphasis added). But the Court did not expressly hold that birth dates were included within the category of "other forms of personal information." Nevertheless, this Office has routinely found that birth dates of private citizens appearing in public records will provide minimal oversight into the government's actions while significantly invading the person's personal privacy. *See, e.g.*, 18-ORD-022; 16-ORD-120; 15-ORD-095; 14-ORD-178; 14-ORD-123. This privacy concern with birth dates is exceptionally acute because the names of individuals appearing in public records are not categorically exempt under KRS 61.878(1)(a). *See Kentucky New Era, Inc.*, 415 S.W.3d at 87.

This Office has noted that, in some instances, the year of a person's birth might be important to determine whether the government is properly carrying out its duties. *See, e.g.*, 20-ORD-102 n.1 (noting that birth years "could be necessary to determine systemic governmental practices related to age"). There may be other examples when the privacy interest in birth years must yield to the public interest in the information, such as determining whether an individual meets a minimum age requirement for some legal purpose, *i.e.*, running for public office or other similar situation. Even in these scenarios, however, the public interest will most likely be served by providing the year of

birth only. Inspection of the full birth date would likely be unnecessary except in the most specific of circumstances.

Because there are few instances in which the public interest in a birth year would outweigh the privacy interest at stake, and even fewer instances when the privacy interest in the entire birth date would yield to the public interest, birth dates fall within the categorical rule protecting “other forms of personal information.” *Kentucky New Era, Inc.*, 415 S.W.3d at 89. A requester may attempt to overcome the categorical rule exempting birth dates by showing that the public interest in such information outweighs the privacy interests at stake. *See Zink*, 902 S.W.2d at 828. However, the Appellant has failed to make such a showing here. The Appellant states only that criminal defendants should be treated differently than “victims, witnesses, and uncharged suspects.” *See Kentucky New Era, Inc.*, 415 S.W.3d at 89. Although the Court in *Kentucky New Era* recognized that criminal defendants have less of a justifiable privacy interest in information about them contained within police records, the Appellant here has still not explained how the birth dates of criminal defendants will serve the public interest of ensuring that the government is performing its duties. Access to birth dates, especially those accompanying the name of the individual, provide a prime target for identity thieves. A criminal defendant is at no less risk of having his or her identity stolen than “victims, witnesses, and uncharged suspects.” Accordingly, KSP did not violate the Act when it categorically redacted the birth dates appearing in its database.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings. The Attorney General will accept notice of the complaint e-mailed to OAGAppeals@ky.gov.

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