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Dear Harold:

Thought I would write you a letter before I leave town for Daytona, where I hope it is warmer. My brother will do his show Friday night, 8-9pm on WHAS. New program director, thought he might not do a show, although he has done one the Friday before the 500 for 12 years. 840 am. I know you will be asleep, but if you are awake, tune in!

I bought a copy of Selections last week in our large independent bookstore. Did not see Case Open, although they usually have a copy. I know they have sold a few books. The Bev Oliver one is a Starburst book, not a Cand G. She includes a picture of herself, Jean Hill, John Newman, and Marina Oswald at a 93 conference in Sudbury, ONT. I think that was the same one Wrone went to right before he came to Frederick. Her book is written with Coke Buchanan, whose name sounds familiar.

I hope you willconsider what I said about making a short index or list of legit researchers. I saw Chip Selby get a credit on Unsolved Mysteries Friday, I have seen Reasonable Doubt so many times I feel like I know him!

Just got a phone call, about a will. I HOPE YOU HAVE SIGNED YOUR WILL! It is bad enough I am a procrastinator, you better not be.

I also hope that you can get the PR cranked up a little for Never Again. I believe that you should try to get a PEOPLE magazine piece on you. They don't always have only big stars, they once did a profile on a friend of mine who was a quilt expert, bought them here in Kentucky and sold them to the Kennedys and other big money types in New York and Boston. I have a small quilt collection, including one made from the underground mining clothes of my best friend's father. He lets me keep it, I think the memories are too painful, so I have it on permanent loan. His dad's dead. The quilt expert, Bruce Mann, was starting to show me all the tricks of collecting quilts when he got killed in a car wreck.

A Tony Brown Journal show had a good discussion of the Malcolm X murder. Another without a proper investigation. I can't help but think that Hoover must have really liked Malcolm, considering how much he hated MLKing. Seems there were gunman who were never arrested. They made one really good point. Some early editions of the NY Times said the police had two men in custody, later ones only one. Reminds me of two things- Papers used to have more editions than they have today, and if you are doing research by reading old papers, it can make a difference what edition you are looking at.

I don't know if Malcolm was as anti-Semitic as some of the rest of the Black Muslims. We are probably getting a homogenized Malcolm X today,he is seen as a strong black leader, which he was, but I am sure we don't get to hear his more hellraising speeches.

This program also dealt with his remark that the JFK murder was a case of"the chickens coming home to roost." He tried to explain his way out of that one, but what the hell can you say about a remark like that?

I don't think that Jane Norris will want to do another JFK show for awile, although she got some attention with her last one, from people calling in. But Joe Elliott, who does the 9pm-midnight show, might. I don't know Joe, but then I don't know Jane! Joe had Jim Marrs, Burt Griffin, and the guy who said Oswald acted alone- the guy who corresponded with you when he was a kid-Jim Moore? About three years ago. Anyway, Joe Elliott is now also doing the Sunday morning show. So, when the book is out, I'll see if he has any interest in having you on. He is actually better than Jane Norris, he is a blind guy who has replaced Milton Metz. Metz was very well known in this area, I think he did the night time talk shows for 35 years. With the night coverage for WHAS reaching most of the Midwest and South, the nighttime shows are the best for PR. My brother Larry has had people call in from Connecticut ,Virginia, and South Carolina and Georgia. Once a caller said,"Larry, I'm calling from Snellville, Georgia. I bet you don't know where that is! " Larry said he did, he had stayed there a few months previous. Guy could not believe it.

So that would probably be our best bet. I hope you and Lil are feeling well. We are fine, Betsy is going to Michigan in June to visit with her father, and drive over from Chicago to Drummond Island, where her uncle has built a home in one of the hardest to get to areas in the US.

I better get back to work, I include a copy of the case we lost and are taking to the Supreme Court here in KY. Open Records case. The Appeals Court thinks it is an ambulance chasing case! They acted like lawyer advertising is illegal. Which it is not. Take care.

Bill

been met.

In the present case, the consumer could have provided notice prior to filing his complaint but could have proceeded immediately thereafter with court action. The consumer, who was represented by counsel, had no reason not to be aware of the notice requirement as stated in KRS 355.2607(3). If the seller had presented the issue of reasonable time as a defense, the consumer could have presented the factual situation to be taken into account. The factfinder could have then determined if notice within a reasonable time had been given.

By accepting that this is the proper method of procedure, all parties' interests in the conflict are protected. All interested parties - consumers and sellers including those sellers acting in good faith, are provided the benefits of pre-litigation notice as contemplated by the code drafters. Sellers have the opportunity to offer settlement and consumers are potentially able to avoid the expense of litigation as well. Furthermore, the consumer subjected to a bad faith seller can rely upon the determination of what a "reasonable time" should be in his/her case through successful allegation of unfavorable factors once the factfinder establishes there was notice given....

While the majority asserts that there is no need to follow the commonly accepted approach when there is no basis in logic for the accepted rule, I disagree. First, I believe the logic is clear. Second, when an overriding purpose is to ensure uniformity in the law, it becomes that much more important to consider other states' interpretations of similar laws. For this reason alone, I believe the holding of the majority is destructive. Further, one essential underlying premise of the Uniform Commercial Code, which is to provide a system whereby consumer transactions can be handled outside the courtroom, is dealt a devastating blow by the holding of the majority.

For the foregoing reasons, I dissent.

Spain and Stumbo, JJ., join this dissent.

S.F.1 forms, also known as the "Employer's First Report of Injury," are exempt from disclosure under the Open Records Act, as such disclosure would constitute a clearly unwarranted invasion of the personal privacy of the injured employees.

COURT OF APPEALS NO. 93-CA-001858-MR
Zink, Appellant v. Commonwealth, Appellee
Appeal from Franklin Circuit Court
William L. Graham, J.
AFFIRMING
Rendered: December 2, 1994
1994 Ky. App. LEXIS 141

Before: DYCHE, JOHNSON and SCHRODER, Judges.

Attorneys for Appellant: John F. Zink, Pro Se; and William L. Neichter, Louisville, KY

Attorney for Appellee: Valerie L. Salven, General Counsel, Frankfort, KY

JOHNSON, Judge: ...

John F. Zink (appellant), by letter dated June 19, 1992, made a request that the Kentucky Department of Workers' Claims (Department) provide him access under the Kentucky Open Records Act (KRS 61.870 *et. seq.*) to certain records under the Department's control. Specifically, Zink wished to inspect S.F.1 forms filed with the Department pursuant to the Kentucky Workers' Compensation Act. The S.F.1 is also known as the "Employer's First Report of Injury," and includes such information as the name and address of the employer and the nature of his business along with a brief statement of the facts giving rise to the employee's injury. But more importantly to this appeal, the form includes detailed personal information concerning the injured employee[.]... Appellant is an attorney whose field of practice includes workers' compensation claims. He sought to utilize the information provided by the forms to target direct mail solicitations to potential clients.

On July 1, 1992, ... the Department denied full inspection as requested, stating that the forms were exempt from the open records act on the grounds (1) that compliance with the request would place an unreasonable burden on the Department pursuant to KRS 61.872(5), now amended to (6); (2) that the request to inspect the S.F.1 forms would constitute a clearly unwarranted invasion of personal privacy, pursuant to KRS 61.878(1)(a); and, (3) that the requested public records constituted preliminary matters, pursuant to KRS 61.878(1)(g) and (h), now amended to (h) and (i).

The Department offered to provide the appellant a computer print-out showing the name, date of injury, county of injury, injury code and part of body injured, and days of work missed for each of the reported injured workers. The Department also offered to supply ... a key to the injury codes so that he could determine the exact nature of each reported injury. The appellant agreed to receiving these print-outs, but did not waive his initial request for full inspection.

The appellant, pursuant to KRS 61.880(2), requested that the Attorney General formally review the denial of inspection of the records[.]... The Attorney General in his published decision numbered 92-ORD-1261 ... held that the denial was proper based upon the "unreasonable burden" exception ... and as a "clearly unwarranted invasion of personal privacy" (KRS 61.878 (l)(a)).

The appellant, pursuant to KRS 61.882, filed a complaint seeking a *de novo* review in Franklin Circuit Court[.]... Cross-motions for summary judgment were filed, and the court entered summary judgment in favor of the Department. This appeal followed.

KRS 61.872(1) provides, in part, that "All public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884...." The exception central to this discussion is that in KRS 61.878(1)(a) which states, in part, as follows:

> (1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court[.]...
>
> (a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy[.]

Additionally, a further limitation on inspection appears in ... (6) which states that "[i]f the application places an unreasonable burden in producing public records ... the official custodian may refuse to permit inspection of the public records or mail copies thereof."

We are also required to consider the aforecited sections in conjunction with KRS 61.882(3), which provides that an agency resisting disclosure has the burden of proof to sustain its action, and KRS 61.871, which provides:

> The General Assembly ... declares that the basic policy of KRS 61.870 to 61.884 is that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed[.]...

Appellant bases his appeal on the grounds that neither KRS 61.878(1)(a) nor KRS 61.872(6) permit the Department to deny him access to the S.F.1 forms.

In determining whether the appellant's request constitutes clearly unwarranted invasion of personal privacy under KRS 61.878(1)(a), we are guided by ...*Kentucky Bd. of Examiners of Psychologists v. Courier-Journal & Louisville Times Co.*, Ky., 826 S.W.2d 324 (1992). Under that holding, our analysis begins with a determination of whether the subject information is of a "personal nature." If we find that it is, we must then determine whether public disclosure "would constitute a clearly unwarranted invasion of personal privacy." This latter determination entails a "comparative weighing of antagonistic interests" in which the privacy interest in nondisclosure is balanced against the general rule of inspection and its underlying policy of openness for the public good. *Id.* at 327. ...

Clearly, much of the information contained in the S.F.1 forms touches upon the personal features of private lives.... [I]nformation such as marital status, number of dependents, wage rate, social security number, home address and telephone number are generally accepted by society as details in which an individual has at least some expectation of privacy. Appellant points out that much of this same information is contained in other public documents which are made available for public inspection such as police accident reports[.]... As has been pointed out, however, when an individual enters on the public way, breaks a law, or inflicts a tort on his fellow man he forfeits his privacy to a certain extent. *See* OAG 76-511. We also realize that telephone numbers and home addresses are often publicly available through sources such as telephone directories and voter registration lists. However, we think this information is no less private simply because that information is available someplace. We deal therefore, not in total non-disclosure, but with an individual's interest in selective disclosure.

Having found that the forms sought by the appellant contain information of a personal nature, we proceed to determine whether such an invasion of privacy is warranted by weighing the public interest in disclosure against the privacy interests involved.... The relevant public interest supporting disclosure in this instance is nominal at best. Disclosure of the information appellant seeks 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. While there may be some merit to appellant's assertion that the broad public interest would be served by the dissemination of information to injured workers regarding their legal rights under the workers' compensation statutes, this cannot be said to further the principal purpose of the Open Records Act.

Against an Open Records Act public interest in disclosure, which is *de minimis* at best, we weigh the interests of the injured workers in non-disclosure of the personal information contained in the S.F.1 forms. Disclosure of the requested information would release to the public the home address and telephone number of each injured employee, information he may fervently wish to remain confidential or only selectively released. The employee would then be subjected to unsolicited mail from appellant and perhaps offensive mail or telephone calls from others.... ["]The importance of the right to privacy in one's address is evidenced by the acceptance within society of unlisted telephone numbers, by which subscribers may avoid publication of an address in the public directory, and postal boxes, which permit the receipt of mail without disclosing the location of one's residence. These current manifestations of the ancient maxim that 'a man's home is his castle' (citation omitted) support the ... important privacy interest in the addresses sought." *Heights Community Congress v. Veterans Administration*, 732 F.2d 526, 529 (6th Cir. 1984), *cert. den.*, 469 U.S. 1034, 105 S.Ct. 506, 83 L.Ed.2d 397. Similarly, many individuals choose to disseminate their home telephone numbers only on a selected basis. We, too, are hesitant to denigrate the sanctity of the home, that place in which an individual's privacy has long been steadfastly recognized by our laws and customs....

No less intrusive would be the release of the employee's social security number. Those nine digits today represent no less than the keys to an information kingdom as it relates to any given individual. Access to a wealth of data compiled by both government agencies and private enterprises such as credit bureaus is obtainable simply upon presentation of the proper social security number. Further, few things in our society are deemed of a more intimate nature than one's income....

Because the privacy interests of the injured employees in personal details appearing on the S.F.1 forms substantially outweighs the negligible Open Records Act related public interest in disclosure, we conclude that disclosure would constitute a "clearly unwarranted invasion of personal privacy" under KRS 61.878(1)(a). Having found the records in controversy to be exempted from disclosure under one statutory exemption, we will not lengthen this Opinion by addressing whether production of the records would amount to an unreasonable burden on the Department.

The decision of the Franklin Circuit Court is [*affirmed*].

KRS 342.0011 does not penalize workers who, before they are injured, have limited occupational ability due to their intellectual capacity or their degree of education or training.

SUPREME COURT NO. 94-SC-390-WC
Commonwealth of Kentucky Transportation Cabinet, Appellant v. Blackburn, et al., Appellees
AND SUPREME COURT NO. 94-SC-444-WC
Whittaker, Appellant v. Blackburn, et al., Appellees
Appeal from Court of Appeals
Nos. 93-CA-985-WC and 93-CA-1143-WC
AFFIRMING
Petition for Rehearing Filed: 12/2/94
Rendered: November 23, 1994
1994 Ky. LEXIS 131

Attorneys for Appellants: Thomas L. Ferreri, Ferreri & Fogle, Louisville, KY for Transportation Cabinet; and Joel D. Zakem, Labor Cabinet - Special Fund, Louisville, KY, for Whittaker

Attorneys for Blackburn: Kelsey E. Friend and Robert J. Greene, Kelsey E. Friend Law Firm, Pikeville, KY

Opinion of the Supreme Court:

Claimant, whose date of birth was January 2, 1949, had a ninth grade education and no ... vocational training. He worked his entire adult life for the employer herein, performing duties which included ... manual labor. In 1986, at the time of the injury ..., claimant's average weekly wage was $239.44[.]

The Administrative Law Judge (ALJ) determined that the injury of June 26, 1986, aroused a preexisting dormant venous insufficiency which gradually worsened as claimant continued to work. As a result, claimant no longer is able to lift more than 50 pounds, occasionally, or more than 25 pounds, frequently. He is unable to stand or sit for more than one hour at a time, and he can only climb, stoop, kneel, crouch, or crawl on an occasional basis.

There was medical evidence that claimant was either of borderline intelligence or mildly mentally retarded and that, regardless of his injury, his occupational opportunities were limited.... After considering claimant's physical limitations in the light of age, education, work experience, and limited intellect, the ALJ concluded that claimant was permanently and totally occupationally disabled and apportioned two-thirds of the award to the employer and one-third to the Special Fund. No prior, active occupational disability was attributed to claimant's limited intellectual capacity.

The employer appealed to the Workers' Compensation Board (Board), arguing that claimant's congenital mental retardation limited his employment opportunities[.]... Therefore, the argument continued, such mental retardation should constitute a prior, active occupational disability. However, the Board noted that under the definition of occupational disability set forth in KRS 342.0011, educational or intellectual shortcomings do not constitute a compensable injury or occupational disease. Only injuries that would have been compensable had they been caused by work are considered to produce prior, active disability for workers' compensation purposes. *Wells v. Bunch*, Ky., 692 S.W.2d 806 (1985)[.]... Therefore, the Board affirmed the decision of the ALJ. The Court of Appeals affirmed, adopting the Board's opinion, and we [affirm]....

KRS 342.0011 requires an individualized determination of a worker's occupational disability as a result of a work-related injury.... It does not penalize workers who, before they are injured, have limited occupational ability due to their innate intellectual capacity or their degree of education or training. Instead, the focus of KRS 342.0011 is on determining the impact of the impairment ... caused by a work-related injury on the particular worker's ability to earn an income, in other words, on determining what that particular worker has lost as a result of the injury.

In the instant case, the ALJ determined that claimant was employed in a work setting that was consistent with his limited capabilities[.].... Therefore, his income from that employment