COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
CASE NO. 2012-SC00021

LEONARD LAWSON — APPELLANT

v.

OFFICE OF THE ATTORNEY GENERAL and
JACK CONWAY, in his Official Capacity
as Attorney General of Kentucky, et al. — APPELLEES

BRIEF OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND THE E.W. SCRIPPS COMPANY AS AMICI CURIAE IN SUPPORT OF APPELLEES

On Appeal form the Court of Appeals
Case No. 2011-CA-000210-MR

Bruce D. Brown
Mark R. Caramanica
Aaron Mackey
The Reporters Committee
for Freedom of the Press
1101 Wilson Blvd., Suite 1100
Arlington, VA 22209
Telephone: (703) 807-2100

Jeffrey C. Mando
Adams, Stepner, Woltermann
& Dusing, PLLC
40 W. Pike St.
Covington, KY 41012
Telephone: (859) 394-6200
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

It is hereby certified that true and correct copies of this brief were served via First Class U.S. Mail, postage prepaid, this ___ day of January, 2013, to: Hon. Thomas D. Wingate, Judge, Franklin Circuit Court, Franklin County Judicial Center, 669 Chamberlin Ave., Frankfort, KY 40601; J. Guthrie True, True Guarnieri Ayer, LLP, 124 West Clinton Street, Frankfort, KY 40601; Nicole H. Pang, Assistant Attorney General, 700 Capitol Ave., Suite 118, Frankfort, KY 40601; Jon L. Fleischaker, Dinsmore & Shohl, LLP, 101 S. Fifth St., Suite 2500, Louisville, KY 40202; and Hon. Samuel P. Givens, Jr., Clerk of the Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601.

_____
Counsel for Amici Curiae

INTRODUCTION

Pursuant to CR 76.12(4)(e), *amici curiae* The Reporters Committee for Freedom of the Press and The E.W. Scripps Company state that the purpose of this *amici curiae* brief is to aid the Court in its review of the opinion of the Court of Appeals, particularly in regard to the analysis Kentucky courts must undertake when scrutinizing whether records should be withheld under the privacy exception to the Open Records Act, KRS 61.878(1)(a). The Reporters Committee is a voluntary, unincorporated association of reporters and editors based in Arlington, Virginia that works nationally to defend the First Amendment rights and freedom of information interests of the news media. The E.W. Scripps Company is a diverse, 131-year-old media enterprise that owns locally focused media properties, including television stations, newspapers, and local news and information websites such as WCPO-TV, the ABC affiliate in Cincinnati, and a newspaper in Henderson, Ky. As advocates for journalists, we have a strong interest in ensuring that state and federal open records laws, including the Kentucky Open Records Act, remain robust. *Amici* therefore urge this Court to reject Appellant's argument that the age of a document requested under the Open Records Act is determinative of whether it must be withheld.

Instead, *amici* ask this Court to affirm the Court of Appeals and hold that the age of a requested document is not determinative when balancing the interests in public disclosure against purported privacy harms. Such a holding would not only reaffirm the balancing analysis this Court embraced in previous decisions such as *Cape Publications, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 821-22 (Ky. 2008), but would also align with federal courts that have analyzed how the age of a document may affect its releasability. Additionally, affirming that the age of the document, by itself, is not enough to deny a valid records request refutes the idea that there is a right to forget certain public records on the ground that they were created decades ago. Recognizing such a right would dramatically expand the Open Records Act's privacy exemption to the detriment of government transparency.

The Open Records Act is not intended to facilitate erasing history. Holding that the age of a document alone can trump the public's right to access certain records would run counter to the

"underlying policy of openness" in the Open Records Act, *Cape Publications*, 260 S.W.3d at 822, shifting the burden onto requesters to show that the documents should be released. The outcome would also give short shrift to the command that exemptions within the act are to be "strictly construed." KRS 61.871. An adverse decision would therefore harm requesters seeking access to records under the Open Records Act where the requested document is not of recent creation. As such, this Court should affirm the Court of Appeals decision and reject Appellant's argument to expand the privacy exception in this manner.

STATEMENT OF POINTS AND AUTHORITIES

ARGUMENT

I. KENTUCKY COURTS SHOULD NOT PLACE DETERMINATIVE WEIGHT ON A DOCUMENT'S AGE WHEN DECIDING WHETHER RECORDS CAN BE WITHHELD UNDER THE OPEN RECORDS ACT'S PRIVACY EXCEPTION.

This Court should reject Appellant's call to make the age of a document requested under the Open Records Act determinative of whether it can be released to a requester. In so doing, this Court would reaffirm, once more, the balancing test used to determine whether a document can be withheld under the Open Records Act's personal privacy exception. The personal privacy exception prevents the disclosure of "information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." KRS 61.878(1)(a). In determining whether documents can be withheld under the privacy exception, this Court has repeatedly relied on a two-part test that first looks at whether the information sought is of a personal nature and then asks whether the disclosure of the records would constitute a clearly unwarranted invasion of personal privacy. *See Cape Publications*, 260 S.W.3d at 821. The court then weighs the "antagonistic interests" between the privacy concerns in nondisclosure against the public interest in disclosure and the general rule that such records are open for inspection to fulfill the Open Records Act's policy of government transparency. *Id.* at 822 (quoting *Zink v. Dep't of Workers' Claims*, 902 S.W.2d 825, 828 (Ky. App. 1994)); s*ee also Beckham v. Board of Educ. of Jefferson County*, 873 S.W.2d 575, 578 (Ky. 1994); *Kentucky Bd. of Exam'rs of Psychologists v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324, 327-28 (Ky. 1992).

Although Appellant identifies the analysis this Court must undertake when determining whether to withhold records under the privacy exception, Appellant argues that because the document sought by Appellees, a proffer given by Mr. Lawson in 1983, is 30 years old, that alone is sufficient to withhold it under the Open Records Act. *See* Appellant Br. at 12 ("When all is said and done, the age of the proffer alone strongly informs against its release."). Appellant also argues that the passage of time between when the document was created and when it was

requested by Appellees increases Appellant's privacy interest in the document. *See* Appellant Br. at 10. Taken to its logical end, Appellant's argument is that as a document requested under the Open Records Act ages, the balancing test becomes unnecessary. In short, the age of the requested document becomes the litmus test for courts when determining whether to withhold certain records that may implicate an individual's privacy, rather than the comparative balancing test Kentucky courts currently undertake.

Allowing the age of a document to determine whether it can be withheld under the Open Records Act would not only upset the traditional analysis Kentucky courts have used when scrutinizing the privacy exception, but would also negatively impact future requesters. This could mean that the public interest in disclosing documents requested under the Open Records Act—which might be quite compelling—must take a backseat to the age of the document, which may categorically foreclose disclosure. This would represent a dramatic expansion of the privacy exception and would also require requesters to affirmatively demonstrate that the documents should be released, which would run counter to the Open Records Act's presumption that all records are open. Accepting Appellant's argument would also raise practical line-drawing problems for Kentucky courts, which would have to determine at what point in time a document becomes so old as to warrant non-disclosure. The argument envisions a public with no interest in history for its own sake or in how historic events relate to or inform current matters.

By emphasizing that no single factor is sufficient to trigger the privacy exception, this Court would continue to align its jurisprudence with federal courts that have confronted the issue and declined to hold that age alone can determine whether a record can be withheld because of privacy concerns. Such a decision would also conform to broader privacy law principles, which have not recognized that there is a right to be forgotten. Finally, maintaining the current analysis under the privacy exception would allow this court to balance all relevant factors in the present case, including Mr. Lawson's status as a public figure and the public interest in the document at issue.

a. The age of a requested document should not categorically exempt a record from disclosure under the Open Records Act, as that would upset the carefully crafted balancing test this Court created when determining whether to withhold records under the privacy exception.

Kentucky courts interpreting the Open Records Act's privacy exception have never held that any one factor, including the age of the requested document, is determinative of whether the record should be withheld. This Court's decision in *Lexington-Fayette Urban County Government v. Lexington Herald-Leader Company*, 941 S.W.2d 469 (Ky. 1997) demonstrates why Appellants argument to alter the analysis undertaken under the Open Records Act's privacy exception must be rejected.

In *Lexington-Fayette Urban County Government*, this Court faced the question of whether confidentiality clauses in settlement agreements reached in lawsuits against police departments could trigger the Open Records Act's privacy exception. *Id.* at 470-71. Before undertaking its analysis of the records at issue, this Court discussed at some length key decisions interpreting the privacy exception, including *Kentucky Board of Examiners of Psychologists*, 826 S.W.2d 324 (Ky. 1992) and *Zink*, 902 S.W.2d 825 (Ky. App. 1994). *Lexington-Fayette Urban County Government*, 941 S.W.2d at 471-72. Synthesizing the decisions in the previous cases, this Court identified the core principles that drive the analysis in cases involving the privacy exception, stating: "Of 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 serious personal embarrassment or humiliation." *Id*. at 472 (emphasis added).

The precedents interpreting the privacy exception to the Open Records Act therefore make clear that it is the underlying content of the document that drives the balancing inquiry when determining whether to release or withhold particular records and not on the age of the requested document. The inquiry is therefore centered on the role the document played in government affairs and its attendant public interest. This guiding principle flows naturally from the purpose of the Open Records Act itself, which sets forth a presumption in favor of government

transparency, even when disclosure "may cause inconvenience or embarrassment to public officials or others." KRS 61.871.

b. Federal cases interpreting similar privacy provisions in the federal Freedom of Information Act have not held that the age of the document determines whether a record can be withheld.

The balancing test Kentucky courts undertake in examining privacy claims under the Open Records Act is consistent with the interpretation of similar privacy exemptions found in the Freedom of Information Act, 5 U.S.C. § 552, ("FOIA"), as federal courts focus on the content of the document at issue and the context of the purported privacy harm, similar to Kentucky courts. Further, federal courts have never held that the age of the document alone determines whether it can be withheld under FOIA.

Federal courts interpretation of FOIA's privacy exemptions should provide interpretive guidance to this Court when looking at the privacy exception in the Open Records Act as both are phrased similarly and require courts to conduct a balancing analysis. *Compare* KRS 61.878(1)(a) ("information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy") *with* 5 U.S.C. § 552(b)(6) ("personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy"); *compare Cape Publications*, 260 S.W.3d at 821 (discussing the privacy exception's balancing test) *with Dep't of Air Force v. Rose*, 425 U.S. 352, 371-73 (1976) (describing congressional history indicating that federal courts must balance interests when determining whether FOIA's privacy exemptions are applicable).

Courts interpreting FOIA have consistently applied the balancing analysis under the statute's privacy exemptions and have not allowed the age of the document to determine whether it can be withheld. Appellants do not cite any federal cases and *amici* are not aware of any federal court that has held that the age of the document alone is sufficient to prevent its disclosure. Instead, the cases in which federal courts have dealt with the age of requested records and claims of privacy

indicate that the primary focus of the balancing inquiry remains on the content and context of the requested document.

For example, in *Rosenfeld v. U.S. Dep't of Justice*, No. 07-3240, 2012 WL 710186 (N.D. Cal. March 5, 2012) (slip op.), the court scrutinized whether FOIA's privacy exemptions were applicable to a 40-year-old FBI document that detailed parking citations received by a close associate of Ronald Reagan. In assessing the privacy interests implicated in the document, the court focused on whether the release of information about an individual's parking citations would result in stigma. *Id*. at *5. The court held that the privacy interest in the document was minimal, reasoning that there would be very little stigma created by releasing information about parking violations from 40 years ago. *Id*. Addressing the age of the document, the court reasoned that while "the traffic violations are obscure and likely forgotten and thus its publication implications some privacy interests, the fact that the documents concerns old traffic violations as opposed to more serious criminal prosecutions decreases the likely stigma that would follow such a disclosure." *Id*.

The court then held that the privacy interest was further diminished because the subject of the records was a public figure who was active in politics. *Id*. After holding that the public interest in knowing why the FBI had investigated a close associate of Reagan outweighed the minimal privacy harm, the court ordered the release of the document. *Id*. at 6-8.

The court's holding in *Rosenfeld* is similar to the Court of Appeals holding in the present case in that in both instances, the courts did not believe that the documents created inherent privacy harms if they were released. In the case at bar, the Court of Appeals recognized that the disputed document contained information about Mountain Enterprises involvement in bid-rigging for state road contracts instead of information that would be considered private. Similarly in *Rosenfeld*, the court recognized that there was no real privacy concern in the information, and therefore there was no privacy interest that could increase with time. More broadly, *Rosenfeld* demonstrates that the content of the records itself, and its potential privacy harms, drives the balancing analysis federal courts undertake within the context of FOIA's privacy exemptions.

Appellant cites *Fitzgibbons v. CIA*, 911 F.2d 755, 768 (D.C. Cir. 1990) and *Brown v. Dep't of Justice*, 742 F. Supp. 2d 126, 131 (D.D.C. 2010) for the proposition that privacy rights under FOIA increase with the passage of time. Both cases involved requests for records related to law enforcement investigations where federal agencies had withheld the names of third parties under Exemption 7(C). *See Fitzgibbons*, 911 F.2d at 767-68; *Brown*, 742 F. Supp. 2d at 127. In *Fitzgibbons*, the plaintiff seeking the records argued that the passage of time had decreased the privacy expectations of the third parties to warrant disclosure, including the name of an individual who appeared in the investigatory records. *See Fitzgibbons*, 911 F.2d at 768. In response, the court stated that privacy interests under FOIA do not diminish with the passage of time, reasoning that because the context of the individual's association with the file was unclear, the potential privacy harm remained, regardless of the passage of time. *Id*.

Appellant's citation to *Brown* is not instructive as the court itself did not further analyze the issue of how time may impact purported privacy harms. The court simply cites *Fitzgibbons* for the general principle that privacy interests involving investigative records may not diminish over time. *See Brown*, 742 F. Supp. 2d at 131. Regardless, *Fitzgibbons* and *Brown* stand for the proposition that, depending on the context of the purported privacy harm and the content of the document at issue, the disclosure of an individual's name appearing in law enforcement records creates privacy concerns that do not decrease with time. The cases do not, however, lead to the conclusion that the passage of time increases the potential privacy harm. If anything, the cases suggest that the privacy harm at best remains constant, as the stigma of the association with criminal activity would remain regardless of the time at which the documents are disclosed. They certainly do not hold that a document in which a subject has little or no privacy to begin with (as in the instant case) obtains greater privacy protection over time.

Additionally, Appellant's reliance on *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) for the idea that the privacy harm of a document requested under FOIA increases with time is also misplaced. The issue in *Reporters Committee* concerned whether FBI compilations of arrest records of individuals from various state and federal law

enforcement agencies, known as rap sheets, could be withheld under FOIA's Exemption 7(C). *Id*. at 757. As Justice Blackmun began his discussion of the privacy interests at stake, he wrote that "the extent of the protection accorded a privacy right at common law rested in part on the degree of dissemination of the allegedly private fact and the extent to which the passage of time rendered it private." *Id*. at 763. Appellants seize on this language in their brief to argue that the 26 intervening years between when the document at issue in the present case was created and requested enhances Mr. Lawson's privacy under the Open Records Act and therefore requires that the document be withheld.

The statement, standing by itself or read within the context of the *Reporters Committee* decision, does not provide support for the proposition that the age of a document determines whether a document can be withheld under statutory exceptions to FOIA or analogous state open records laws. First, the statement clearly indicates that the impact of the passage of time only plays a part in the privacy protections afforded at common law, suggesting that even if the common law provides insight into the interpretation of FOIA's privacy exceptions, the passage of time is only one factor to be considered among many. Second, the statement regarding the passage of time did not by itself provide the basis for the ultimate determination that the rap sheets could be withheld under Exemption 7(C). The Court's reasoning instead rested on the belief that there was a substantial privacy interest in the requested documents itself because they were a "compilation of otherwise hard-to-obtain" information. *Reporters Committee*, 489 U.S. at 764.

Rather than supporting Appellant's argument that the age of the document requested in the present prevents its disclosure, federal courts' interpretation of FOIA's privacy exemptions reinforce a balancing analysis Kentucky courts undertake when scrutinizing the privacy exception to the Open Records Act. And within that balancing test, the focus of the inquiry by federal courts remains on the content of the documents at issue, much like the Kentucky cases discussed above. Moreover, the cases do not affirmatively state that FOIA's privacy exemptions recognize a right to withhold certain documents based on their age alone.

c. Cases interpreting broader common law privacy rights reject the notion of a right to be forgotten.

Even in the context of broader privacy rights recognized under the common law, courts have not held that there is a right to be forgotten such that Appellant can argue that his privacy in statements made to the government decades ago increase with time. Although early cases developing the common law privacy torts recognized that a person's changed circumstances and the passage of time could form the basis of a cause of action for invasion of privacy, the principle has been subsequently rejected. Instead, courts recognize that individuals who are in the public spotlight cannot claim that the passage of time allows them enhanced privacy protections.

The idea that an individual could subsequently dictate whether public events can be forgotten due to actions of the individual or the passage of time was soundly rejected in *Sidis v. F-R Publishing Corp*., 113 F.2d 806 (2d Cir. 1940). In that case, a former child prodigy who had attracted great media attention brought an invasion of privacy claim against The New Yorker for publishing an article about him many years later describing how the now-adult was working as a clerk. *Id*. at 807-09. In rejecting Sidis' action for invasion of privacy, the court held that Sidis' privacy invasion claim would not lie, grounding its reasoning on the fact that Sidis had obtained the status of a public figure as a child prodigy and that he remained newsworthy when The New Yorker reported on his current status. *Id*. at 809. The court then said it would permit scrutiny of an individual who achieved the status of a public figure, even years after the person had gained notoriety and notwithstanding Sidis' attempts to withdraw from the public, reasoning that even the passage of time did not diminish the public's interest in public figures' "misfortunes and frailties." *Id*.

The Second Circuit's reasoning in *Sidis* became highly persuasive and was subsequently adopted by many courts. A Connecticut court's decision in *Jones v. New Haven Register, Inc.*,

763 A.2d 1097, 1101-02 (Conn. Supp. 2000) recounts the many cases[1] that recognize the persuasiveness of the reasoning in *Sidis*, including *Werner v. Times-Mirror Co.*, 193 Cal. App. 2d 111 (Cal. Ct. App. 1961), which held that a former politician who had been involved in a scandal remained a public figure nearly 30 years later when a newspaper wrote about his wedding. *Sidis* has also been cited by Kentucky courts, which recognized that an individual cannot expect to interact with the public and keep all his affairs private. *See Voneye v. Turner*, 240 S.W.2d 588, 590 (Ky. App. 1951) ("No individual can live in an ivory tower and at the same time participate in society and expect complete non-interference from other members of the public."); *Trammel v. Citizen News Co., Inc.*, 148 S.W.2d 708, 709 (Ky. App. 1941).

Perhaps the most eloquent rejection of the idea that there is a right to be forgotten can be found in Dean William Prosser's highly regarded and much-cited article on privacy in which he provided the modern framework for the four privacy torts. William Prosser, *Privacy*, 48 Calif. L. Rev. 383, 389-407 (1960). In addressing the question regarding whether the passage of time increases an individual's privacy, Prosser wrote:

> There can be no doubt that one quite legitimate function of the press is that of educating or reminding the public as to past history, and that the recall of former public figures, the revival of past events that once were news, can properly be a matter of present public interest.

Id. at 418. Prosser went on to say that his review of decisions regarding the issue demonstrated "that once a man has become a public figure, or news, he remains a matter of legitimate recall to the public mind to the end of his days." *Id*.

Common law conceptions of privacy therefore provide additional support to reject Appellant's contention that his privacy rights under the Open Records Act increase with time or that he has an individual right to command that public documents be forgotten because they were created decades ago. Further, because Appellant is a newsworthy figure, which will be discussed

[1] *See e.g., Cohen v. Marx*, 211 P.2d 320 (Cal. Ct. App. 1949); *Rawlins v. Hutchinson Publishing Co.*, 543 P.2d 988 (Kan. 1975); *Milsap v. Journal/Sentinel, Inc.*, 100 F.3d 1265 (7th Cir. 1996); *Zerangue v. TSP Newspapers, Inc.*, 814 F.2d 1066 (5th Cir. 1987).

more fully in the next section, the media and the general public have an ongoing interest to review relevant past events as chronicled in public records.

d. All relevant factors must be weighed when determining whether to release records in the present case, including Appellant's status as a newsworthy figure.

By rejecting Appellant's call to make the age of the document the primary focus of the balancing inquiry under the Open Records Act's privacy exception, this Court can weigh additional, highly relevant factors such as the Appellant's status as a continuing newsworthy figure. Despite Appellant's claim that he is not a public figure, *see* Appellant's Brf. at 11, a review of events in Kentucky demonstrates that not only is Mr. Lawson a public figure, but also that his close connections with government leaders makes the contents of his proffer a matter of legitimate public interest.

Since the 1980s, Mr. Lawson has been involved in nearly all aspects of public life in Kentucky. His road construction business regularly receive state and federal tax dollars, the subject of which attracted national attention and a federal prosecution that ultimately ended in Mr. Lawson's acquittal. *See* Jim McElhatton, *Contract Cons Can Exploit Transportation Delay*, WASHINGTON TIMES, Jan. 13, 2010, at A1, *available at* 2010 WLNR 710992[2] (describing how Lawson's firm received $24 million in federal stimulus funds after his indictment, which occurred in violation of federal bid distribution policies). Lawson's construction companies were also generating news in the 1980s for receiving road contracts and suing in court to obtain payment for work on a shopping development. *See, e.g.*, *Pavers Default Judgment is Upheld*, THE ASSOCIATED PRESS, Sept. 10, 1986, *available at* 1986 WLNR 1608843; *Contracts and Low Bids*, ENGINEERING NEWS-RECORD, 1987, *available at* 1987 WLNR 484958.

Mr. Lawson is also active politically, as he and members of his family have given more than $400,000 in political contributions since 2000, making him one of the largest political contributors in the state. *See* Tom Loftus, *Road Contract Lawson Resumes Political Donations*,

[2] To facilitate access to secondary sources, "WLNR," or Westlaw NewsRoom, citations are provided whenever possible.

THE COURIER-JOURNAL, June 23, 2010, *available at* 2010 WLNR 12794629. Mr. Lawson has made political donations for decades, giving more than $2,000 to a gubernatorial candidate in the 1980s. *See Wilkinson Has Spent $1.2 Million on Campaign*, LEXINGTON HERALD-LEADER, Oct. 10, 1986, *available at* 1986 WLNR 1612679.

Mr. Lawson also regularly socializes with prominent state government leaders contemplating running for higher office. *See Stumbo, Road Contractor Lawson Fished in Florida*, THE COURIER-JOURNAL, April 23, 2010, *available at* 2010 WLNR 8436636. He is also active philanthropically, providing an unspecified amount of money to a Methodist elementary school that provides education to poor students in Appalachian counties. *See* Peter Smith, *Donors Help Give Mountain Christian School New Life*, THE COURIER-JOURNAL, Aug. 1, 2010, *available at* 2010 WLNR 15279891.

The stories described above demonstrate that Appellant is clearly a newsworthy figure who has injected himself into the affairs of the state's government, politics, and social issues. Given Mr. Lawson's newsworthiness, it is natural for the public to want to know additional details about a prior investigation, especially in light of the fact that at the time Appellees made their request, Appellant was indicted and accused of using his political connections for personal gain. The proffer given 30 years ago could still provide a fuller account of the government's interaction with Mr. Lawson during that initial investigation and shed further light on how officials treated Mr. Lawson. Release of the document would not only increase government transparency regarding the government's actions in regard Appellant in 1983, but would also allow the press to provide a full and complete account of events that, as Dean Prosser described above, remain a matter of public interest today.

Appellant's status as a newsworthy figure with close ties to government should also factor into the Court's balancing analysis and should be given equal, if not greater weight than the fact that the requested document happens to be 30 years old. Given Appellant's status as a newsworthy figure and the fact that he has no privacy right to be forgotten, the public interest in disclosing the document outweighs Mr. Lawson's negligible privacy interests.

CONCLUSION

For all the reasons stated herein, *amici* respectfully ask the Court to affirm the decision of the Court of Appeals and reject Appellant's call to upset the test Kentucky courts use when determining whether the Open Records Act's privacy exception applies.

Respectfully submitted,

Jeffrey C. Mando
Adams, Stepner, Woltermann
& Dusing, PLLC
40 W. Pike St.
Covington, KY 41012
Telephone: (859) 394-6200
Counsel for Amici Curiae