

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2009-CA-000100-MR

WILLIAM E. GROOME

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 08-CI-01560

COMMONWEALTH OF KENTUCKY,  
DEPARTMENT OF REVENUE

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: CAPERTON AND STUMBO, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

STUMBO, JUDGE: William Groome appeals the denial of an Open Records request entered against him by the Franklin Circuit Court. Groome requested from the Department of Revenue information regarding oil and gas well numbers and

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<sup>1</sup> Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

lease numbers corresponding to individual certificates of delinquency upon which he holds liens. The Department of Revenue, Attorney General, and Franklin Circuit Court each found that this information was confidential and not subject to disclosure. Groome argues that this information is public information and therefore subject to disclosure via an Open Records request. We find that Groome's argument potentially has merit, but we are without sufficient findings to make a final determination of the issue. We therefore reverse the decision of the circuit court and remand this case for an evidentiary hearing to determine if this information is public and therefore subject to disclosure.

Mr. Groome is a private purchaser of delinquent oil and gas tax bills. He is authorized to purchase these tax bills, hold a lien on the underlying property, and charge additional fees, costs, and interest as provided by statute. One year after the issuance of these bills, he is then allowed to enforce the certificate of delinquency. Groome argues that without the oil and gas well numbers and lease numbers, information the Department of Revenue has, he does not know exactly what property he has an interest in and cannot enforce his certificates of delinquency.

On June 24, 2008, Groome, through counsel, submitted an Open Records request to the Department of Revenue for information pertaining to the oil and gas properties on which he held tax liens. Specifically he was looking for oil and gas well numbers and lease numbers corresponding to each certificate of delinquency.

On June 27, 2008, the Department of Revenue denied Groome access to the information. The Department of Revenue stated that the information requested was contained on tax return forms and therefore confidential pursuant to Kentucky Revised Statute (KRS) 61.878(1)(a), (i), and (l), KRS 131.081(15), and KRS 131.190(1).

KRS 61.878(1)(a) states:

(1) The following public records are excluded from the application of KRS 61.870 to 61.884 [the Open Records Act] and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:

(a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy . . . .

KRS 61.878(1)(i) states that “[p]reliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency” are exempt from Open Record requests.

KRS 61.878(1)(l) states that “[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly” are exempt from Open Record requests.

KRS 131.081(15) states:

Taxpayers shall have the right to privacy with regard to the information provided on their Kentucky tax returns and reports, including any attached information or documents. Except as provided in KRS 131.190, no information pertaining to the returns, reports, or the affairs of a person's business shall be divulged by the department to any person or be intentionally and without authorization inspected by any present or former commissioner or employee of the Department of Revenue, member of a county board of assessment appeals, property valuation administrator or employee, or any other person.

Finally, KRS 131.190(1) states in pertinent part:

No present or former commissioner or employee of the Department of Revenue, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws, nor does it extend to any matter properly entered upon any assessment record, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or his properly authorized agent with information respecting his own return. Further, this prohibition does not preclude the commissioner or any employee of the Department of Revenue from testifying in any court, or from introducing as evidence returns or reports filed with the department, in an action for violation of state or federal tax laws or in

any action challenging state or federal tax laws . . . .  
(Emphasis added).

To summarize how these three statutes interact, KRS 131.081(15) states that no information contained on tax returns can be disclosed to the public. The information Groome is seeking is contained on the oil and gas well owner's and lessee's tax returns. KRS 131.081(15) is an act of the General Assembly and therefore invokes KRS 61.878, which exempts it from disclosure via an Open Records request. However, KRS 131.190(1) contains exceptions to KRS 131.081(15) and lists what information can be disclosed to the public.

On July 24, 2008, Groome appealed the Department of Revenue's denial of his Open Records request. Groome noted that the Department of Revenue is responsible for selling the tax delinquency certificates and is the only source of information from which he can ascertain which properties were sold to him.<sup>2</sup> Groome argued that the information he requested was a matter of public record and was therefore an exception to the prohibition against disclosure. He provided a website, <http://www.uky.edu/KGS/>, which is run by the Kentucky Geologic Survey and provides a map and list of gas and oil wells, along with the names of the oil and gas well companies leasing the property. However, the website does not set out the owner of the property upon which the wells sit. Groome argued that this website made the information he sought public and therefore subject to disclosure through an Open Records request.

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<sup>2</sup> The only identifying information contained on the certificate of delinquency is the name and address of the taxpayer who owns the property. There is no identifying information regarding the location of the gas or oil wells themselves.

The Attorney General's Office rendered an opinion in which it upheld the decision of the Department of Revenue. The opinion held that KRS 131.190(1) and KRS 131.081(15) require the information being sought to remain confidential and not subject to an Open Records request.

On September 18, 2008, Groome appealed the opinion of the Attorney General's Office to the Franklin Circuit Court. Upon a motion by Groome for a hearing, one was held. However, the trial judge declined to hear any more evidence and only relied on what had been presented to the Attorney General's Office. Ultimately, the trial court upheld the decisions of the Attorney General's Office and the Department of Revenue and denied the Open Records request. This appeal followed.

Groome presents several arguments in his brief, but only his first has merit. He argues that the information being requested is public and therefore not subject to the prohibitions of KRS 61.878(1)(a), (i), and (l), KRS 131.190(1), and KRS 131.081(15). Groome again discloses the fact that the information he is seeking can be found on an internet website that is accessible to the general public.

This case revolves around whether the information Groome is seeking fits within one of the exemptions provided by KRS 131.190(1). Groome believes it does because the information can be found publically on the internet.

Interestingly, neither the opinion of the Attorney General's Office nor the Franklin Circuit Court address Appellant's contention that this information can be found on

the internet.

The Department of Revenue argues in its brief that the well numbers available through the Kentucky Geological Survey website are not the same well numbers as are reported on the tax returns. There was, however, no evidence presented on the point because the trial court declined to hold an evidentiary hearing despite Appellant's request.

At every step of the way Groome has maintained that the information he is seeking is a matter of public record, however, none of the opinions in this case have mentioned whether this is true or not in light of the website. For this reason we find that the circuit court needs to hold an evidentiary hearing in which Groome and the Department of Revenue can offer proof as to whether the information being sought is a matter of public record and therefore subject to disclosure pursuant to KRS 131.190(1).

We, therefore, reverse and remand this case to the Franklin Circuit Court.

KNOPF, SENIOR JUDGE, CONCURS.

CAPERTON, JUDGE, DISSENTS AND FILES SEPARATE  
OPINION.

CAPERTON, JUDGE, DISSENTS: Groome presents no argument that would compel the disclosure of the requested information. Whether or not the information might be available elsewhere does not mean that the same information derived from a tax form is thereby subject to disclosure.

Each year parents claim their children as dependents on their tax filings, and each year there is a birthday for that child celebrating another year on this earth. In fact, most children have a birthday party to celebrate their attained age. The mere fact that they publicly disseminate the information concerning their birthday or party associated therewith and in celebration thereof does not make the information contained on the tax forms as to their name or age any more or less subject to disclosure.

If the information held by the Department of Revenue is from a tax form, it is not subject to disclosure regardless of wherever else or from whomever else the information might be available. Certainly, an onerous burden would be placed on the Department of Revenue if it must determine that the information it held, derived from a tax return, had been disclosed elsewhere and was, therefore, subject to release through the Open Records Act.

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