

MISSISSIPPI ETHICS COMMISSION

Miss. Assn. of Supervisors
Winter Conference
Hilton, Jackson
January 8, 2020

The Public Records Act

MISSISSIPPI ETHICS COMMISSION

Administers and enforces the **Ethics in Government Law** by

- Keeping Statements of Economic Interest;
- Investigating alleged violations of law;
- Issuing written advisory opinions.

The Commission also enforces the

- **Open Meetings Act** and
- **Public Records Act**

The Commission also issues advisory opinions on the **Campaign Finance Law** and levies fines for late filing of campaign finance reports.

PUBLIC RECORDS ACT

- All documents and other records, including electronic records, related to government business are public records.
- Everyone has the right to inspect or copy.
- Government can recoup actual cost of retrieving and/or copying public records.
- Many records are exempted.
- If record contains exempt material, government may have to redact and copy.

Public Records Complaints

- Complaint may be filed with the Commission or the appropriate chancery court.
- Commission will send a copy of the complaint to the public body, which can respond.
- Commission may dismiss complaint, make preliminary finding or hold a hearing.
- Commission can order production of records and can conduct *in camera* review of records.
- Commission can mediate disputes.
- Either party may appeal or enforce Ethics Commission order in the local chancery court.

The Public Records Request

- A person who requests public records must request an identifiable record or class of records before a public body can comply with the request.
- An "identifiable record" is one that staff of the public body can reasonably locate.
- An "identifiable record" is not a request for "information" in general and it is not a list of questions for a public body to answer.

See Public Records Opinion Nos. R-10-003 (Hendrix vs. PERS) and R-10-013 (Thomas vs. City of Gulfport).

Response to Public Records Request

- Public body may adopt a policy allowing up to 7 working days to respond.
- The time to respond can be extended to 14 working days only where the public body cannot respond within 7 days and gives good cause in writing to the person requesting the records.
- Communicate in good faith with requestor.
- Denial of request must be in writing.

Access to Records

R-09-007: **Garner vs. State Treasurer**

- State agency fulfilled its obligation to provide “reasonable access” to public records by posting a searchable electronic version of public records on the agency’s web site.

R-15-034: **Lawson vs. Smith Co. Ch. Clerk**

- Chancery clerk complied fully with the Public Records Act by making real estate records available for inspection and printing/copying at the clerk’s office via computer terminal or in deed books at the clerk’s office during regular business hours.

Costs of Providing Records

- Public body may require prepayment of reasonably calculated actual costs of searching, reviewing, redacting, duplicating and mailing public records.
- Public body should estimate the expenses of producing the records requested and give the requestor an itemized estimate.
- Public body should not begin incurring expenses until requestor has responded by revising request or depositing costs.

Costs of Providing Records

- Labor costs of searching, reviewing and redacting records must be charged at the rate of the lowest paid person competent to fulfill the request.
- Attorneys may only charge for work requiring an attorney, especially when preliminary review can be done by non-attorney.
- Copy costs of \$0.15 per page or less are deemed reasonable. Higher costs must be justified.

Public Records Cases

Costs for Responding

Harrison Co. Dev. Commn. v. Kinney, 920 So.2d 497 (Miss. App. 2006).

- Any attempt by a public body to impose fees exceeding actual costs reasonably incurred constitutes a willful and knowing denial of access to public records that warrants the imposition of a civil penalty and the award of attorney fees and costs.

R-14-017: Rogers v. Rankin Co. Sch. Dist.

- School district may recover as costs reasonable fees incurred by district for attorney's review of detailed legal bills for privileged or confidential information.

Public Records Cases

Costs for Responding

R-16-028: Bryant vs. Jackson State University

- Public body should provide a reasonable estimate of actual costs before actually producing public records so that costs are not incurred for which requestor refuses to pay.

Some Statutory Exemptions

- Attorney work product, § 25-1-102.
- Individual tax records, § 27-3-77.
- Personnel files, § 25-1-100.
- Trade secrets, proprietary commercial and financial information, § 79-23-1.
- Workers' compensation records, § 71-3-66.

Public Records Cases

Common Exemptions: Personnel Records

R-14-025: O'Bryant v. Moss Point

- Personnel records cannot be produced unless the public body obtains consent from the employee to whom the records pertain.
- A public body is not required to give an employee a copy of his or her own personnel records.

R-13-001: Williams v. City of Jackson

- City employees' time cards are not entirely exempt.
- Information related to name, job title, accumulated leave and gross pay is not exempt.
- Other information may be exempt personnel records.

Common Exemptions: Investigative Reports

- Defines “incident report,” “investigative report,” and “law enforcement agency.”
- Incident report must include identity of person arrested, date, time, location and nature of offense.
- Incident report must be disclosed.
- Investigative reports may contain detailed information about crime and victim.
- Investigative report does not have to be disclosed.

Public Records Cases

Common Exemptions: Investigative Reports

R-10-005: Sacharin v. Horn Lake Police Department

- When a police “incident report” contains information which should have been contained in an “investigative report,” the exempt information can be redacted, and the redacted report must be produced.

R-10-008: Webster v. Southaven Police Dept.

- Police department policy and procedure manuals are generally not exempt “investigative reports.” Internal affairs complaints are exempt “personnel records.”

Public Records Cases

Common Exemptions: Attorney-Client Privilege and Attorney Work Product

R-13-002: Butts v. Tupelo School District

While the district may be required to produce documents that simply reflect the total amount billed by an attorney, the District cannot be required to disclose information in detailed invoices from an attorney that contain attorney-client privileged communications or information subject to the attorney work product doctrine.

Public Records Cases

Invasion of Privacy

R-17-008: **Robertson, Hendrix vs. University of Mississippi (Consolidated)**

- NCAA Notice of Allegations is a matter of public concern which outweighs any privacy concerns of athletic boosters named therein, and the university may not redact the names of the boosters.
- Cites Denise Taylor-Travis v. Jackson State University, Civil Action No. 3:12-CV-51-HTW-LRA (S.D. Miss.).

Public Records Cases

Electronic Records

R-13-023: NE Miss. Daily Journal v. City of Tupelo

- Text messages concerning city business sent by the mayor in his role as chief executive officer of the city qualify as public records, even though sent from the mayor's personal phone. Any text message used by a government official "in the conduct, transaction or performance of any business, transaction, work, duty or function of [the government]" is a public record, regardless of where the record is stored.

Confidential Business Info.

- Public records furnished by third parties which contain trade secrets or confidential commercial or financial information are exempt from disclosure.
- Public body must give notice to third party which has 20 days to seek protective order.
- If protective order is not obtained by third party, then public body must produce.

Model Public Records Rules

- Nonbinding unless you adopt them
- Designed for use by all state and local agencies
- Can be modified to suit your needs
- Provide guidance on questions which are not answered in the law and have not been addressed by courts
- Posted on Ethics Commission web site

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