

## CHAPTER V

### OPEN MEETINGS AND ACCESS TO PUBLIC RECORDS

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In 1975 the legislature adopted and the governor signed into law the Open Meetings Act. Eight years later, the Mississippi Public Records Act of 1983 became law. These two laws have significantly improved the public's ability to obtain information about the conduct and performance of public officials, information about how public bodies formulate and adopt public policy, and governmental records and documents. Amended since their original adoption, the Open Meetings Act and the Mississippi Public Records Act of 1983 were enacted for the benefit of the public and have been broadly and liberally interpreted by the Mississippi Supreme Court.

#### OPEN MEETINGS

##### Legislature Declares Formulation and Adoption of Public Policy Is Public Business and Must be Conducted in Open Meetings

The Open Meetings Act (hereinafter throughout this section, the Act) begins with a legislative declaration of policy for the State of Mississippi:

*It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy, it is hereby declared to be the policy of the State of Mississippi that the formulation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein.<sup>203</sup>*

##### Definition of "Public Body" and Exceptions, Definition of "Meeting," and Regulating the Conduct of Persons Attending the Meeting

The Act defines "public body" as:

- (i) any executive or administrative board, commission, authority, council, department, agency, bureau or any other policymaking entity, or committee thereof, of the State of Mississippi, or any political subdivision or municipal corporation of the state, whether such entity be created by statute or executive order, which is supported wholly or in part by public

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<sup>203</sup> Code, § 25-41-1. Emphasis added.

funds or expends public funds, and (ii) any standing, interim or special committee of the Mississippi Legislature.<sup>204</sup>

Exempted from the provisions of the Act are:

the judiciary, including all jury deliberations, public and private hospital staffs, public and private hospital boards and committees thereof, law enforcement officials, the military, the State Probation and Parole Board, the Workers' Compensation Commission, legislative subcommittees and legislative conference committees, the arbitration council established in Section 69-3-19 and license revocation, suspension and disciplinary proceedings held by the Mississippi State Board of Dental Examiners.<sup>205</sup>

The Act defines "meeting" as "an assemblage of members of a public body as which official acts may be taken upon a matter over which the public body has supervision, control, jurisdiction or advisory power."<sup>206</sup> The Act declares that all official meetings of any public body, unless otherwise provided in the Act or in the *Constitution of the United States* or the *Constitution of the State of Mississippi*, are to be public meetings and must be open to the public at all times unless declared an executive session (discussed below).<sup>207</sup> The provisions of the Act do not apply to chance meetings or social gatherings of the members of a public body.<sup>208</sup> Finally the Act allows any public body to make and enforce reasonable rules and regulations for the conduct of persons attending its meetings.<sup>209</sup>

### Mississippi Supreme Court Decisions

With regard to this declaration of public policy for the state and the definitions of public body and meeting, the Mississippi Supreme Court has held:

- ▶ That the Board of Trustees of State Institutions of Higher Learning is not exempt from the Act.<sup>210</sup>

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<sup>204</sup>Code, § 25-41-3(a).

<sup>205</sup>Ibid.

<sup>206</sup>Code, § 25-41-3(b).

<sup>207</sup>Code, § 25-41-5.

<sup>208</sup>Code, § 25-41-17.

<sup>209</sup>Code, § 25-41-9.

<sup>210</sup>*Board of Trustees of State Institutions of Higher Learning v. Mississippi Publishers Corp.*, 478 So. 2<sup>nd</sup> 269 (Miss. 1985).

- ▶ That any rules and regulations of administrative boards should provide no less access of the public to their proceedings than is afforded under the Act.<sup>211</sup>
- ▶ That attendance by members of a county board of supervisors, individually or in a body, at social functions, at charities, or with industry or business representatives when their only purpose and function is to listen and to take no official action at the time are not public meetings within the Act.<sup>212</sup>
- ▶ That meetings held by a county board of supervisors with city officials and several other people to discuss developing a sewage system in the southern part of the county to induce homeowners to build in that area were official meetings under the Act.<sup>213</sup>
- ▶ That a meeting falls under the provisions of the Act when there is an assemblage of members of the public body at which official acts, including actions relating to the formulation and determination of public policy, may be taken; that although purely social functions are not covered, factors to consider in making a determination of whether an activity is business or social include activity that takes place at the function, advance call or notice given members, agenda, claim for per diem and travel expenses by members, and other pertinent factors.<sup>214</sup>
- ▶ That the requirement that official meetings be open to the public at all times may not be avoided by the use of telephone polls among members of the public body to conduct official acts; however, recording a final vote by telephone is not prohibited where the vote is reduced to public record and all deliberation prior to the final vote has taken place in accordance with the Act.<sup>215</sup>
- ▶ That academic program review and evaluation of curriculum offerings in state universities conducted by the Board of Trustees of State Institutions of Higher Learning must be open and public.<sup>216</sup>

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<sup>211</sup>*State Oil & Gas Bd. v. McGowan*, 542 So. 2<sup>nd</sup> 244 (Miss. 1989).

<sup>212</sup>*Hinds County Board of Supervisors v. Common Cause*, 551 So. 2<sup>nd</sup> 107 (Miss. 1989).

<sup>213</sup>*Ibid.*

<sup>214</sup>*Board of Trustees of State Institutions of Higher Learning v. Mississippi Publishers Corp.*, *op. cit.*

<sup>215</sup>*Ibid.*

<sup>216</sup>*Ibid.*

- ▶ That the Board of Trustees of State Institutions of Higher Learning is a public body within the meaning of the Act and that executive session meetings between the trustees and its university presidents and staff are subject to the Act's provisions.<sup>217</sup>

#### Opinions of the Attorney General of Mississippi

Further, the Attorney General of Mississippi has issued a number of opinions pertaining to applicability of the Act in light of the legislative declaration and definitions discussed previously:

- ▶ A municipality participating in a self-insured pool is a public body carrying out a governmental function and is subject to the Open Meetings Act in the conduct of such activities.<sup>218</sup>
- ▶ Nothing in the Act requires a water and sewer district to provide their consumer list to a third party requesting the list.<sup>219</sup>
- ▶ A county Council of Governments (COG) was merely a voluntary association of local governments and did not appear to have any corporate existence; thus, it did not appear to fall within the purview of the Act. However, attendance by members of local governing boards at meetings held by voluntary associations of local governments may fall under the purview of the Act.<sup>220</sup>
- ▶ A luncheon will not violate open meetings laws as long as the governing body does not discuss matters pertaining to possible future public matters.<sup>221</sup>
- ▶ A meeting of the Metro Narcotics Task Force is exempted from the Act.<sup>222</sup>
- ▶ If a non-profit corporation that administers baseball leagues is not an entity created by statute or order of the state or city, then the non-profit corporation is not subject to the Act, notwithstanding the fact that it is funded, in part, by public money.<sup>223</sup>

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<sup>217</sup>*Mississippi Publishers Corp. v. Board of Trustees*, 9 Media L. Rptr. 2450 (Miss. 1983).

<sup>218</sup>Lee, November 6, 1991, A.G. Op. #91-0855.

<sup>219</sup>Tisdale, November 24, 1993, A.G. Op. #93-0833.

<sup>220</sup>Cochran, February 24, 1994, A.G. Op. #94-0049.

<sup>221</sup>Caldwell, August 9, 1996, A. G. Op. #96-0425.

<sup>222</sup>Klein, May 3, 1991, A.G. Op. #91-0293.

<sup>223</sup>Mills, March 9, 1994, A.G. Op. #94-0113.

- ▶ A private citizen may tape record all discussions taking place at open meetings of any public body, subject to such reasonable rules and regulations which that public body may enact; it would not be reasonable for a public body to flatly prohibit such practice.<sup>224</sup>
- ▶ Unless a public body finds, consistent with fact, that the presence and use of a camera or several cameras would be disruptive, then the public body cannot prohibit cameras at a public meeting. The determination of the disruptiveness of cameras is one of fact in each case which must be made by each governmental entity.<sup>225</sup>
- ▶ Whether television and radio coverage disrupt a meeting are questions of fact to be determined by public officials charged with the responsibility to enforce reasonable rules and regulations for the conduct of persons attending open meetings.<sup>226</sup>
- ▶ When the governing authorities decide in executive session to make an offer of settlement of a lawsuit or to authorize an attorney to negotiate within a certain range, the governing authority should state in the minutes only that the attorney is authorized to negotiate with the respective individuals to settle the lawsuit. When the governing authorities finally approve an amount which has been accepted for settlement of the lawsuit, then the governing authorities should state in the minutes the amount which they have approved for settlement of the lawsuit.<sup>227</sup>
- ▶ When the governing authorities agree in executive session to make an offer to a prospective employee for a certain salary or to authorize an official of the governing body to negotiate within a certain salary range, the minutes should state that the appropriate official is authorized to negotiate an employment contract with the individual. When the governing authorities reach an agreement with the prospective employee, the governing authorities should state in the minutes the salary approved for the position.<sup>228</sup>
- ▶ When an executive session is properly convened by the board of supervisors, the question of who may attend the executive session is a matter entirely within the discretion of the board, and generally those persons who are not members of the board are automatically excluded from executive session unless they are requested by the Board to attend.<sup>229</sup>

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<sup>224</sup>Garrett, May 3, 1990, A.G. Op. #90-0317 and Warren, May 12, 1993, A.G. Op. #93-0340.

<sup>225</sup>Lee, August 11, 1993, A.G. Op. #93-0484.

<sup>226</sup>Lackey, September 6, 1990, A.G. Op. #90-0605.

<sup>227</sup>Donald, November 18, 1992, A.G. Op. #92-0767.

<sup>228</sup>Ibid.

<sup>229</sup>Ross, April 12, 1995, A.G. Op. #95-0183.

- ▶ Neither a private nonprofit corporation nor a limited liability corporation meets the definition for a “public body.”<sup>230</sup>
- ▶ A board cannot achieve a quorum through participation over the telephone; a quorum must be physically present; however, as long as deliberations and votes are conducted in a manner that provides access to the public and are properly recorded, and the meeting is properly noticed and at all times open to the public at the place normally set aside for board meetings, participation of a member in a regular meeting via telephone conference call satisfies the requirements of the Open Meetings Act.<sup>231</sup>

### Executive Sessions

A public body may hold an executive session where persons other than the members of the public body are excluded for one or more of eleven (11) reasons. Within the framework of the statutory language of the Act itself, all statutory exceptions must, under the spirit and philosophy of the Act, be strictly construed against executive sessions. Although an executive session might be held under one of the exceptions, this is insufficient in the absence of at least a reasonably arguable basis of an actual, present need for a closed meeting on the subject.<sup>232</sup> The reason given for going into executive session must be meaningful and must be of sufficient specificity to inform those present that there is in reality a specific, discrete matter or area which the public body had determined should be discussed in executive session. The public body may then go into executive session to discuss this one matter, and, when the discussion is concluded, must reopen the meeting. No matter may be discussed in the executive session other than the announced subject.<sup>233</sup> Reasons that a public body may hold an executive session are:

- ▶ Transaction of business and discussion of personnel matters relating to the job performance, character, professional competence, or physical or mental health of a person *holding a specific position*.<sup>234</sup> The Mississippi Supreme Court has held that personnel matters are restricted to matters dealing with employees hired by a county board of supervisors, not those employees of some other county officials and not other county officials themselves. Further, the court held

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<sup>230</sup>Williamson, February 4, 2000, A.G. Op. #99-0674.

<sup>231</sup>Montague, December 10, 1999, A.G. Op. #99-0647.

<sup>232</sup>*Hinds County Board of Supervisors v. Common Cause*, op. cit.

<sup>233</sup>*Ibid.* The Attorney General of Mississippi has opined (Stewart, August 22, 1991, A.G. Op. # 91-0541) that a governing authority holding a public meeting may enter into executive session to discuss more than one topic at a time if the governing authority complies with the statutory procedures for entering into executive session and spreads upon its minutes the specific reasons for entering into executive session.

<sup>234</sup>*Code*, § 25-41-7(4)(a). Emphasis added.

that a member of a board of supervisors would not be classified “personnel,” and that an independent contractor such as an accountant, lawyer, or architect is not an employee of the board and would not come under “personnel.”<sup>235</sup>

- ▶ Strategy sessions or negotiations with respect to prospective litigation (litigation reasonably likely to occur in the reasonably foreseeable future<sup>236</sup>), litigation, or issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the public body.<sup>237</sup> (A public body can close a meeting to discuss municipal annexation, even when no attorney is present.
- ▶ Transaction of business and discussion regarding the report, development of course of action regarding security personnel or devices.<sup>238</sup>
- ▶ Investigative proceedings by any public body regarding allegations of misconduct or violations of law.<sup>239</sup>
- ▶ Any body of the legislature which is meeting on matters within the jurisdiction of the body.<sup>240</sup>
- ▶ Cases of extraordinary emergency which would pose immediate or irrevocable harm or damage to persons and/or property within the jurisdiction of a public body.<sup>241</sup>
- ▶ Transaction of business and discussion regarding the prospective purchase, sale, or leasing of lands.<sup>242</sup>
- ▶ Discussion between a school board and individual students who attend school within the jurisdiction of the school board or the parents or teachers of the students regarding problems of the students or their parents or teachers.<sup>243</sup>

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<sup>235</sup>*Hinds County Board of Supervisors v. Common Cause*, op. cit.

<sup>236</sup>*Vicksburg v. Vicksburg Printing & Publishing*, 434 So. 2<sup>nd</sup> 1333 (Miss. 1983).

<sup>237</sup>*Code*, § 25-41-7(4)(b).

<sup>238</sup>*Code*, § 25-41-7(4)(c).

<sup>239</sup>*Code*, § 25-41-7(4)(d).

<sup>240</sup>*Code*, § 25-41-7(4)(e).

<sup>241</sup>*Code*, § 25-41-7(4)(f).

<sup>242</sup>*Code*, § 25-41-7(4)(g).

<sup>243</sup>*Code*, § 25-41-7(4)(h).

- ▶ Transaction of business and discussion concerning the preparation of tests for admission to practice in recognized professions.<sup>244</sup>
- ▶ Transaction of business and discussions or negotiations regarding the location, relocation or expansion of a business or an industry.<sup>245</sup>
- ▶ Transaction of business and discussions regarding employment or job performance of a person in a specific position or termination of an employee holding a specific position, including the right to enter into executive session concerning a line item in a budget which might affect the termination of an employee or employees. (All other budget items must be considered in open meetings and final budget adoption must not take place in executive session.)<sup>246</sup>

### Procedure for Going into Executive Session

The technical requirements for a public body to go into executive session, base upon the Mississippi Supreme Court's ruling in *Hinds County Board of Supervisors v. Common Cause of Mississippi*<sup>247</sup> and the provisions of the Act<sup>248</sup>, are:

1. The meeting must begin as an open meeting.
2. A member of the public body must make a motion in open meeting for the meeting to be closed in order to determine whether or not the public body should declare an executive session. The Act does not require a second to this motion, but the vote on the motion must be taken in open meeting. A majority of the members of the public body must vote to close the meeting to determine the question of whether or not to hold an executive session. If a majority of the members of the public body vote to close the meeting for determination of the necessity of an executive session, the meeting will be closed for that purpose only.
3. During this closed session, no other business can be considered, and a vote will be taken on whether or not to declare an executive session. An affirmative vote of three-fifths (3/5) of the members present (3/5 simple majority vote) is required for the public body to declare an executive session.

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<sup>244</sup>Code, § 25-41-7(4)(i).

<sup>245</sup>Code, § 25-41-7(4)(j).

<sup>246</sup>Code, § 25-41-7(4)(k).

<sup>247</sup>551 So. 2<sup>nd</sup> 107 (Miss. 1989).

<sup>248</sup>Code, § 25-41-7.

4. The presiding officer of the public body must then reopen the meeting and announce publicly the results of the vote taken in the closed session on whether or not to declare an executive session. If the members of the public body have voted to declare an executive session, the presiding officer must so state and give the reason for going into executive session. This reason and the “total vote on the question of entering into an executive session” must be recorded and spread upon the minutes. The vote to go into executive session applies only to that particular meeting on that particular day. No matter other than the announced subject may be discussed during the executive session.

### Minutes

Minutes must be kept of all meetings of a public body, whether in open or executive session, showing the members present and absent; the date, time, and place of the meeting; an accurate recording of any final actions taken at such meeting; and a record, by individual member, of any votes taken; and any other information that the public body requests be included or reflected in the minutes. The minutes shall be recorded within a reasonable time not to exceed thirty (30) days after recess or adjournment and shall be open to public inspection during regular business hours. . . .<sup>249</sup>

The total vote on the question of entering into executive session must be recorded, by the individual members expression, in the minutes.<sup>250</sup>

### Notice of Meetings

Any public body which holds its meetings at such times and places and by such procedures as are specifically prescribed by statute shall continue to do so and no additional notice of such meeting shall be required *except that a notice of the place, date, hour and subject matter of any recess meeting, adjourned meeting, interim meeting or any special called meeting shall be posted within one (1) hour after such meeting is called in a prominent place available to examination and inspection by the general public in the building in which the public body normally meets. A copy*

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<sup>249</sup>Code, § 25-41-11. In *Citizens for Equal Property Rights v. Board of Supervisors* [(730 So. 2<sup>nd</sup> 1141 (Miss. 1999))] the court held that although there was not strict adherence to the Open Meetings Act by the zoning commission, there was substantial compliance with the Act, which was sufficient in the absence of prejudice resulting from the lack of compliance, where (1) the first meeting of the commission, held on April 14, 1994, and all subsequent meetings were not recorded within thirty days, but were recorded by the board of supervisors on June 24, 1994, and (2) the commission failed to spread upon its minutes the times and places and the procedures by which all of its meetings are to be held.

<sup>250</sup>*Board of Trustees of State Institutions of Higher Learning v. Mississippi Publishers Corp.*, op. cit.

*of the notice shall be made a part of the minutes or other permanent official records of the public body.*<sup>251</sup>

Further, any public body, other than a legislative committee, which does not have statutory provisions prescribing the times and places and the procedures by which its meetings are to be held must, at its first regular or special meeting after July 1, 1990, spread upon its minutes the times and places and the procedures by which all of its meetings are to be held.<sup>252</sup>

The Mississippi Supreme Court found that a school board's failure to record in the minutes any notice of a special board meeting was a violation of the Act, but that this violation did not void the actions of the school board taken at the meeting.<sup>253</sup> In addition, the Attorney General of Mississippi has opined that in an emergency, the Mississippi Emergency Management Agency and local emergency management organizations may call a special meeting, provided that the required notice is posted within one hour and that the procedure of notification is reasonably calculated to insure that a person could find out where and when the special meeting will be held.<sup>254</sup>

### Enforcement of the Act

The provisions of the Act are enforced by the chancery courts of the state upon the application of any citizen of the state. The chancery courts have the authority to issue injunctions (order from a court prohibiting a person or group from carrying out a given action or ordering a given action to be done) or writs of mandamus (court order demanding that a specified thing be done) to enforce the Act.<sup>255</sup>

The Attorney General of Mississippi has opined that "The open, contumacious violation of the Open Meetings Act by a county board of supervisors is not a violation of any criminal statute."<sup>256</sup> Further, the attorney general has issued an opinion that "The Enforcement provisions of the Open Meetings Act gives any member of the public, including the county supervisor, the right to enforce the Open Meetings Act in the chancery courts of the state."<sup>257</sup>

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<sup>251</sup> *Code*, § 25-41-13(1). Emphasis added.

<sup>252</sup> *Code*, § 25-41-13(2).

<sup>253</sup> *Shipman v. North Panola Consolidated School District*, 641 So. 2<sup>nd</sup> 1106 (Miss. 1994).

<sup>254</sup> Maher, February 20, 1992, A.G. Op. #92-0004.

<sup>255</sup> *Code*, § 25-41-15.

<sup>256</sup> Wolfe, February 1, 2001, A.G. Op. #2001-0019.

<sup>257</sup> *Ibid.*

## ACCESS TO PUBLIC RECORDS

### Legislative and State Policies Regarding Right of Access to Public Records

The Mississippi Public Records Act of 1983 (hereinafter throughout this section, Public Records Act) opens with a declaration of legislative and state policies regarding the right of access to public records, paraphrased as follows:

It is the policy of the legislature and this state that public records must be available for inspection by any person unless otherwise provided by the Public Records Act. Furthermore, providing access to public records is a duty of each public body and automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic record keeping, each agency must ensure reasonable access to records electronically maintained, subject to the rules of records retention.<sup>258</sup>

In addition, the Mississippi Supreme Court has held that any rules or regulations of administrative boards should provide no less access of the public to their proceedings and records than is afforded under the Open Meetings Act and the Public Records Act.<sup>259</sup>

Further, a chancery court has described the right of meaningful access to public records as follows:

Any person need only make a request to inspect, copy, mechanically reproduce or obtain a reproduction of a public record, and, if the record is in existence, the custodian must supply it. The reasons for making the request are not material and the custodian may not inquire into the reason for the request. The choice of which option to employ for obtaining access to the record rests with the person requesting the record, not the custodian. The vested right of persons to obtain records must be balanced against the duty of the custodian to preserve such records so as to insure their integrity, but the exercise of custodial duties must be in a manner least intrusive to access.<sup>260</sup>

### Definitions of “Public Body,” “Public Records,” “Data Processing Software,” and “Proprietary Software”

The Public Records Act establishes the following definitions with regard to access to public records:

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<sup>258</sup>Code, §§ 25-61-1 and 25-61-2.

<sup>259</sup>*State Oil & Gas Board v. McGowan, op. cit.*

<sup>260</sup>Ruling of the court on motions, *Delta Democrat Publishing Co., Inc., et al. v. City of Greenville, et. al.*, No. 47014, Chancery Court of Washington County, Mississippi, Chancellor Nathan P, Adams, November 13, 1986, pp. 5-6.

“Public body” shall mean any department, bureau, division, council, commission, committee, subcommittee, board, agency and other entity of the state or a political subdivision thereof, and any municipal corporation and any other entity created by the Constitution or by law, executive order, ordinance or resolution. . . . [T]he term “entity” shall not be construed to include individuals employed by a public body or any appointed or elected public official.<sup>261</sup>

“Public records” shall mean all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary material, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body.<sup>262</sup>

“Data processing software” means the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications and computer networking programs.<sup>263</sup>

“Proprietary software” means data processing software that is obtained under a licensing agreement and is protected by copyright or trade secret laws.<sup>264</sup>

#### Opinions of the Attorney General Further Defining the Meaning of “Public Records”

In interpretation of the meaning of public records within the context of applicability of the provisions of the Public Records Act, the Attorney General of Mississippi has expressed the opinion that the following are public records and subject to the provisions of the Public Records Act:

- ▶ Voter registration lists (including those retained in electronic format);<sup>265</sup>
- ▶ Applications for voter registration;<sup>266</sup>

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<sup>261</sup> *Code*, § 25-61-3(a).

<sup>262</sup> *Code*, § 25-61-3(b).

<sup>263</sup> *Code*, § 25-61-3(c).

<sup>264</sup> *Code*, § 25-61-3(d).

<sup>265</sup> Molpus, January 16, 1990, A.G. Op. #90-0032.

<sup>266</sup> *Ibid*.

- ▶ The records of a municipal water system or water/sewer department (meter reading lists, billings, and individual account documents),<sup>267</sup>
- ▶ Records of Justice Court dealing with both civil and criminal cases (unless otherwise exempted);<sup>268</sup>
- ▶ Records created prior to July 1, 1983, and that were retained outside of the public body custody by a public body official after the expiration of his term;<sup>269</sup>
- ▶ Activities of a municipality that is participating in a self-insured pool;<sup>270</sup>
- ▶ Books and papers owned by the municipal library;<sup>271</sup>
- ▶ Tariffs of BellSouth;<sup>272</sup>
- ▶ Bid proposals which contractors have submitted to the Highway Commission and which have been publicly read (The Highway Commission may give notice to the contractors that their bid proposals will be made available to the public to allow the contractors opportunity to attempt to get court orders protecting such information.);<sup>273</sup>
- ▶ Gross salaries of state employees (but not net salaries and tax exemption status);<sup>274</sup>
- ▶ A police manual which does not disclose investigative techniques;<sup>275</sup>

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<sup>267</sup>Thompson, May 13, 1992, A.G. Op. #92-0310.

<sup>268</sup>Erby, April 14, 1993, A.G. Op. #93-0210.

<sup>269</sup>Hilliard, December 11, 1998, A.G. Op. #98-0641.

<sup>270</sup>Lee, *op. cit.*

<sup>271</sup>Ellis, April 29, 1993, A.G. Op. #93-0299.

<sup>272</sup>Lanford, June 12, 1998, A.G. Op. #98-0242 and Leggett, June 12, 1998, A.G. Op. #98-0242.

<sup>273</sup>Tabb, March 21, 1990, A.G. Op. #90-0181.

<sup>274</sup>Stringer, March 23, 1994, A.G. Op. #94-0900.

<sup>275</sup>Evans, September 7, 1995, A.G. Op. #95-0613.

- ▶ Report written by a consultant hired by a city which contains information projecting the cost to the city to install a telecommunications system and places a valuation on the facilities of a private provider of telecommunication services in the city who might compete against the city;<sup>276</sup>
- ▶ Names, addresses, and telephone numbers maintained by an E-911 system (A county E-911 Coordinator should give notice to the third party and allow the third party a reasonable period of time to obtain a court order protecting such records as confidential commercial information. This same reasoning would apply to any trade secrets or confidential, commercial, or financial information provided by BellSouth pursuant to its contract with the county.);<sup>277</sup>
- ▶ Information, excluding medical information, in “run reports” from a city emergency medical services unit,<sup>278</sup> and
- ▶ Information regarding present or former inmates of the Department of Corrections is not subject to a general exemption.<sup>279</sup>

#### Records Exempted or Privileged by Law from the Applicability of the Public Records Act

The Public Records Act establishes guidelines for granting public access to certain kinds of information and exempts certain records from public access, as follows:

- ▶ Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information are not be subject to inspection, examination, copying, or reproduction under the provisions of the Public Records Act until notice to the third parties has been given, but the records must be released within a reasonable period of time unless the third parties have obtained a court order protecting the records as confidential.<sup>280</sup>
- ▶ If any public record which is held to be exempt from disclosure pursuant to the provisions of the Public Records Act contains material which is not exempt pursuant to the provision of the Public Records Act, the public body shall separate the exempt material and make the nonexempt material available for examination and/or copying.<sup>281</sup>

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<sup>276</sup>Dunbar, April 17, 1998, A.G. Op. #98-0180.

<sup>277</sup>Leggett, June 12, 1998, A.G. Op. #98-0242.

<sup>278</sup>Lawrence, October 6, 1993, A.G. Op. #93-0592.

<sup>279</sup>Johnson, June 9, 2000, A.G. Op. #2000-0279.

<sup>280</sup>*Code*, § 25-61-9(1).

<sup>281</sup>*Code*, § 25-61-9(2).

- ▶ Trade secrets and confidential commercial and financial information of a proprietary nature developed by a college or university under contract with a firm, business, partnership, association, corporation, individual, or other like entity shall not be subject to inspection, examination, copying, or reproduction.<sup>282</sup>
- ▶ A waste minimization plan and any updates developed by generators and facility operators under the Mississippi Comprehensive Multimedia Waste Minimization Act of 1990 must be retained at the facility and are not subject to inspection, examination, copying, or reproduction.<sup>283</sup>
- ▶ Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret (as defined in the *Code*, § 75-26-3) and data processing software produced by a public body which is sensitive [as defined in the *Code*, § 25-61-9(6)(a)(b)(c)] must not be subject to inspection, copying, or reproduction.<sup>284</sup>

In addition, the Public Records Act states that:

The provisions of this chapter shall not be construed to conflict with, amend, repeal or supersede any constitutional or statutory law or decision of a court of this state or the United States which at the time of this chapter (July 1, 1983) is effective or thereafter specifically declares a public record to be confidential or privileged, or provides that a public record shall be exempt from the provisions of this chapter.<sup>285</sup>

These exemptions include, but are not limited to:

- ▶ certain jury records,<sup>286</sup>
- ▶ personnel records,<sup>287</sup>
- ▶ attorneys' work products,<sup>288</sup>

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<sup>282</sup>*Code*, § 25-61-9(3).

<sup>283</sup>*Code*, § 25-61-9(5).

<sup>284</sup>*Code*, § 25-61-9(6).

<sup>285</sup>*Code*, § 25-61-11.

<sup>286</sup>*Code*, § 9-1-38.

<sup>287</sup>*Code*, § 25-1-100.

<sup>288</sup>*Code*, § 25-1-102.

- ▶ confidential information furnished by third parties,<sup>289</sup>
- ▶ individual tax records,<sup>290</sup>
- ▶ appraisal records,<sup>291</sup>
- ▶ academic records,<sup>292</sup>
- ▶ archaeological records,<sup>293</sup>
- ▶ hospital records (except the official minutes of the board of trustees and certain financial reports),<sup>294</sup>
- ▶ information used for the Birth Defects Registry,<sup>295</sup>
- ▶ reports of Hepatitis B or HIV carrier status of health care providers,<sup>296</sup>
- ▶ records of the Bureau of Vital Statistics,<sup>297</sup>
- ▶ records and reports compiled in accordance with the Mississippi Medical Examiner Act of 1986,<sup>298</sup>
- ▶ information involving ambulatory surgical facilities,<sup>299</sup>

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<sup>289</sup>*Code*, § 25-61-9.

<sup>290</sup>*Code*, § 27-3-77.

<sup>291</sup>*Code*, § 31-1-27.

<sup>292</sup>*Code*, § 37-11-51.

<sup>293</sup>*Code*, § 39-7-41.

<sup>294</sup>*Code*, § 41-9-68.

<sup>295</sup>*Code*, § 41-21-205.

<sup>296</sup>*Code*, § 41-32-7.

<sup>297</sup>*Code*, § 41-57-2.

<sup>298</sup>*Code*, § 41-61-63.

<sup>299</sup>*Code*, § 41-75-19.

- ▶ records relating to applications for licenses to carry concealed pistols or revolvers are exempt for a period of forty-five (45) days from the date of issuance of licenses or final denials of applications,<sup>300</sup>
- ▶ investigative and criminal justice records,<sup>301</sup>
- ▶ voluntary internal environmental self-evaluation reports of industries regulated by the Mississippi Department of Environmental Quality,<sup>302</sup>
- ▶ workers' compensation records,<sup>303</sup>
- ▶ licensure application and examination records,<sup>304</sup>
- ▶ registration information of charitable organizations,<sup>305</sup>
- ▶ commercial and financial records,<sup>306</sup>
- ▶ identity of confidential informants and persons under investigation in hearings conducted under the Public Records Law,<sup>307</sup>
- ▶ traffic reports prepared by a municipal police department,<sup>308</sup>
- ▶ complaints filed with and the minutes of the Judicial Performance Commission,<sup>309</sup>

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<sup>300</sup> *Code*, § 45-9-101.

<sup>301</sup> *Code*, § 45-29-1.

<sup>302</sup> *Code*, § 49-2-71.

<sup>303</sup> *Code*, § 71-3-66.

<sup>304</sup> *Code*, § 73-52-1.

<sup>305</sup> *Code*, § 79-11-527.

<sup>306</sup> *Code*, § 79-23-1.

<sup>307</sup> *Code*, § 45-29-1.

<sup>308</sup> *Code*, § 63-3-417.

<sup>309</sup> *Const.* §177A and Brantley, March 26, 1999, A.G. Op. # 99-0131.

- ▶ political parties,<sup>310</sup>
- ▶ information related to investigation or examination under the Mississippi Securities Act,<sup>311</sup>
- ▶ records maintained by domestic violence shelters, except for official minutes and certain financial reports,<sup>312</sup>
- ▶ tape recordings of a public meeting made by a public board member at his own expense and for his personal use,<sup>313</sup>
- ▶ police radio logs,<sup>314</sup> and,
- ▶ a police officer's daily report.<sup>315</sup>

#### Procedures for Public Access to Records

Any person has the right to inspect, copy, mechanically reproduce, or obtain a reproduction of any public record of a public body, except those which are exempt, in accordance with reasonable written procedures adopted by the public body. These written procedures may address the cost, time, place, and method of access. Public notice of the procedures to be followed to obtain public records must be given by the public body.<sup>316</sup>

If the public body has not adopted written procedures governing public access to records, the right to inspect, copy, mechanically reproduce, or obtain a reproduction of a public record of the public body must be provided within one (1) working day after a written request for a public record is made. A public body's written procedures must provide for production or the denial of production of public records no later than fourteen (14) working days from the date of the public records request.<sup>317</sup>

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<sup>310</sup>Gardner, March 12, 1999, A.G. Op. # 99-0095.

<sup>311</sup>*Code*, § 75-71-111 (c).

<sup>312</sup>*Code*, § 93-21-109.

<sup>313</sup>Warren, May 12, 1993, A.G. Op. #93-0340.

<sup>314</sup>Whitmore, October 14, 1992, A.G. Op. # 92-0793.

<sup>315</sup>*Ibid*.

<sup>316</sup>*Code*, § 25-61-5.

<sup>317</sup>*Ibid*.

Denial by a public body of a request for access to or copies of public records must be in writing and must contain a statement of the specific reason or reasons for the denial. Every public body must maintain a file of all denials of requests for public records. Public records request denials must be kept on file for three (3) years from the date the denials are made. This file of denials must be made available for inspection or copying during regular office hours to any person making a written request to inspect or copy the file.<sup>318</sup>

#### Fees for Costs Incident to Providing Records

A public body may establish and collect fees reasonably calculated to reimburse the public body for the actual cost of searching, reviewing and/or duplicating, and mailing, if applicable, copies of public records. The fee established and collected may not exceed the public body's actual cost in complying with the public records request. The fee must be collected in advance of complying with the request.<sup>319</sup>

In addition, a public body may establish a reasonable fee scale to reimburse it for the costs of creating, acquiring, and maintaining a geographic information system or multipurpose "cadastre" (listing) or any other electronically accessible data. In determining the fees or charges for this type of public records request, the public body may consider the type of information requested, the purpose or purposes for which the information has been requested, and the commercial value of the information.<sup>320</sup>

#### Access to Records Stored, Manipulated, or Retrieved in Electronic Form

Any public body that uses sensitive software [as defined in § 25-61-9(6)(a)(b)(c) of the *Code*] or proprietary software must not by the use of such diminish the right of the public to inspect and copy a public record.<sup>321</sup> In addition, a public body must provide a copy of a public record in the format requested if the public body maintains the record in that format.<sup>322</sup> Moreover, before a public body acquires or makes a major modification to any information technology system, equipment, or software used to store, retrieve, or manipulate a public record, the public body must adequately plan for the provision of public access and the redaction of exempt or confidential information by the

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<sup>318</sup>Ibid.

<sup>319</sup>*Code*, § 25-61-7(1). The Attorney General of Mississippi has opined that "It was proper for the Workers' Compensation Commission to charge \$75.00 per hour for six hours of labor required to construct and test a search program to retrieve certain data from its database in response to a request for such data (Hardwick, June 16, 2000, A.G. Op. #2000-0285).

<sup>320</sup>*Code*, § 25-61-7(2).

<sup>321</sup>*Code*, § 25-61-10(1).

<sup>322</sup>*Code*, § 25-61-10(2).

proposed system, equipment, or software.<sup>323</sup> Finally, a public body may not enter into a contract for the creation or maintenance of a public records data base if the contract will impair the ability of the public to inspect or copy the public records of the public body.<sup>324</sup>

#### Proceedings to Compel Public Access to Records and the Penalty for Wrongful Denial of Access

Any person denied the right to inspect and/or copy public records may institute suit in the chancery court of the county in which the public body is located, and the court must determine whether the public records are exempt from the provisions of the Public Records Act. The court has the authority to prohibit the public body from withholding the public records, order the production of the public records, and grant other equitable relief. Court proceedings concerning public records take precedence on the court's docket over all other matters and must be assigned for hearing and trial at the earliest practicable date and expedited in every way. Lawsuits concerning accessibility of public records are subject to all the rights and rules of appeal for other suits arising in chancery court.<sup>325</sup>

Any person who willfully and knowingly denies to any other person access to non-exempt public records will be fined in an amount not to exceed one hundred dollars (\$100.00). In addition, the violator must pay all reasonable expenses incurred by the person bringing the lawsuit.

#### Public Records Act Does Not Affect the Legislature's Regulation of Its Own Proceedings and Records Access

Those involved in government at the state and local levels will find it interesting that the Public Records Act closes with a provision allowing the state legislature to regulate public access to its records:

Nothing in this chapter (the Public Records Act) shall be construed as denying the legislature the right to determine the rules of its own proceedings and to regulate public access to its records.<sup>326</sup>

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<sup>323</sup> *Code*, § 25-61-10(3).

<sup>324</sup> *Code*, § 25-61-10(4).

<sup>325</sup> *Code*, § 25-61-13.

<sup>326</sup> *Code*, § 25-61-17.