

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, 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.³⁷⁸

Definition of "Public Body" and Exceptions, Definition of "Meeting," Regulating the Conduct of Persons Attending the Meeting, and Meetings Held by Teleconference or Video Means

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 funds or expends public funds, and (ii) any standing, interim or special committee of the Mississippi Legislature.³⁷⁹

Exempted from the provisions of the Act are:

³⁷⁸ Code, § 25-41-1. Emphasis added.

³⁷⁹ Code, § 25-41-3(a).

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.³⁸⁰

The Act defines "meeting" as "an assemblage of members of a public body at which official acts may be taken upon a matter over which the public body has supervision, control, jurisdiction or advisory power; ...any such assemblage through the use of video or teleconference devices."³⁸¹ 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 of America* 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).³⁸²

The Act allows a public body to conduct any meeting [other than an executive session (discussed below)] where public business is discussed or transacted through teleconference or video means.³⁸³ If a quorum of the public body is physically assembled at one location for the purpose of conducting a meeting, additional members of the public body may participate in the meeting through teleconference or video means providing their participation is available to the general public.³⁸⁴

Notice of any such video or teleconference meetings must be provided at least thirty (30) days in advance of the date scheduled for the meeting.³⁸⁵ The meeting notice must include the date, time, place, and purpose of the meeting and must identify the locations for the meeting which must be made accessible to the public.³⁸⁶ All persons attending the meeting at any of the meeting locations must be given the same opportunity to address the public body as persons attending the primary or central location.³⁸⁷ Any interruption in the teleconference or video broadcast of the meeting must result in the suspension of action at the meeting until repairs are made and public access restored.³⁸⁸

³⁸⁰Ibid.

³⁸¹Code, § 25-41-3(b).

³⁸²Code, § 25-41-5 (1).

³⁸³Code, § 25-41-5(2).

³⁸⁴Ibid.

³⁸⁵Code, § 25-41-5(3)(a).

³⁸⁶Ibid.

³⁸⁷Ibid.

³⁸⁸Ibid.

Thirty-day notice is not required for teleconference or video meetings continued to address an emergency or to conclude the agenda of a teleconference or video meeting of the public body for which the proper notice has been given, when the date, time, place, and purpose of the continued meeting are set during the meeting prior to adjournment.³⁸⁹

An agenda and materials that will be distributed to the members of the public body must be made available to the public at the time of the meeting, provided this agenda and materials have been made available to the staff of the public body in sufficient time for duplication and forwarding to all locations where public access will be provided.³⁹⁰ Minutes of all meetings held by teleconference or video means must be recorded according to law (See *Code*, § 25-4-11.), and any votes taken in such meetings must be recorded by name in roll-call fashion and included in the minutes.³⁹¹ In addition, the public body shall make an audio recording of a meeting where a teleconference medium is used or a audio/visual recording if the meeting is held by video means.³⁹² This recording must be preserved by the public body for three (3) years following the date of the meeting and must be available to the public.³⁹³

A public body may meet by teleconference or video means as often as needed if an emergency exists, and the public body is not able to meet in regular session. These emergency meetings must comply with all requirements found in the preceding paragraph, and the nature of the emergency shall be stated in the minutes.³⁹⁴

The provisions of the Act do not apply to chance meetings or social gatherings of the members of a public body.³⁹⁵ Finally the Act allows any public body to make and enforce reasonable rules and regulations for the conduct of persons attending its meetings.³⁹⁶

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.³⁹⁷

³⁸⁹*Code*, § 25-41-5(3)(b).

³⁹⁰*Code*, § 25-41-5(4)

³⁹¹*Ibid.*

³⁹²*Ibid.*

³⁹³*Ibid.*

³⁹⁴*Code*, 25-41-5(5).

³⁹⁵*Code*, § 25-41-17.

³⁹⁶*Code*, § 25-41-9.

³⁹⁷*Board of Trustees of State Institutions of Higher Learning v. Mississippi Publishers Corp.*, 478 So. 2nd 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.³⁹⁸
- ! 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 there only purpose and function is to listen and to take no official action at the time are not public meetings within the Act.³⁹⁹
- ! 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.⁴⁰⁰
- ! 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.⁴⁰¹
- ! 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.⁴⁰²
- ! 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.⁴⁰³
- ! 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.⁴⁰⁴

³⁹⁸*State Oil & Gas Bd. v. McGowan*, 542 So. 2nd 244 (Miss. 1989).

³⁹⁹*Hinds County Board of Supervisors v. Common Cause*, 551 So. 2nd 107 (Miss. 1989).

⁴⁰⁰*Ibid.*

⁴⁰¹*Board of Trustees of State Institutions of Higher Learning v. Mississippi Publishers Corp.*,
op. cit.

⁴⁰²*Ibid.*

⁴⁰³*Ibid.*

⁴⁰⁴*Mississippi Publishers Corp. v. Board of Trustees*, 9 Media L. Rptr. 2450 (Miss. 1983).

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.⁴⁰⁵
- ! Nothing in the Act requires a water and sewer district to provide their consumer list to a third party requesting the list.⁴⁰⁶
- ! 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.⁴⁰⁷
- ! A luncheon will not violate open meetings laws as long as the governing body does not discuss matters pertaining to possible future public matters.⁴⁰⁸
- ! A meeting of the Metro Narcotics Task Force is exempted from the Act.⁴⁰⁹
- ! 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.⁴¹⁰
- ! 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.⁴¹¹
- ! 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

⁴⁰⁵Lee, November 6, 1991, A.G. Op. #91-0855.

⁴⁰⁶Tisdale, November 24, 1993, A.G. Op. #93-0833.

⁴⁰⁷Cochran, February 24, 1994, A.G. Op. #94-0049; Threatt, January 16, 1998, A.G. Op. #97-0835.

⁴⁰⁸Caldwell, August 9, 1996, A. G. Op. #96-0425.

⁴⁰⁹Klein, May 3, 1991, A.G. Op. #91-0293.

⁴¹⁰Mills, March 9, 1994, A.G. Op. #94-0113.

⁴¹¹Garrett, May 3, 1990, A.G. Op. #90-0317 and Warren, May 12, 1993, A.G. Op. #93-0340.

public meeting. The determination of the disruptiveness of cameras is one of fact in each case which must be made by each governmental entity.⁴¹²

- ! 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.⁴¹³
- ! 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.⁴¹⁴
- ! 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.⁴¹⁵
- ! 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.⁴¹⁶
- ! Several aldermen may attend social or civic gatherings without being in contravention of the Open Meetings Act if no official business is discussed and no officials actions are taken.⁴¹⁷
- ! A board of aldermen does not have authority to exclude a member from an executive session because he has revealed what has occurred in a past executive session. There are no sanctions of any kind which may be brought against a member of a board of aldermen who reveals what occurred in an executive session.⁴¹⁸

⁴¹²Lee, August 11, 1993, A.G. Op. #93-0484.

⁴¹³Lackey, September 6, 1990, A.G. Op. #90-0605.

⁴¹⁴Donald, November 18, 1992, A.G. Op. #92-0767.

⁴¹⁵Ibid.

⁴¹⁶Ross, April 12, 1995, A.G. Op. #95-0183.

⁴¹⁷Ladner, May 24, 2002, A.G. Op. #02-0249.

⁴¹⁸Brogdon, January 8, 1999, A.G. Op. #01-3015.

- ! Governing authorities or agencies may decide in executive session to make an offer in settlement of a lawsuit or to authorize an attorney to negotiate within a certain range. In such cases, the governing authorities should state in the minutes only that the attorney or staff is authorized to negotiate. Only when the governing authorities finally approve a specific amount which has been accepted for settlement should the governing authorities reflect that amount in the minutes.⁴¹⁹

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.⁴²⁰ 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.⁴²¹ Reasons that a public body may hold an executive session are:

1. 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*.⁴²² 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 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.”⁴²³
2. Strategy sessions or negotiations with respect to prospective litigation (litigation reasonably likely to occur in the reasonably foreseeable future⁴²⁴), litigation, or issuance

⁴¹⁹Hardy, March 26, 1999, A.G. Op. #01-3120.

⁴²⁰*Hinds County Board of Supervisors v. Common Cause*, op. cit.

⁴²¹Ibid. 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.

⁴²²*Code*, § 25-41-7(4)(a). Emphasis added.

⁴²³*Hinds County Board of Supervisors v. Common Cause*, op. cit.

⁴²⁴*Vicksburg v. Vicksburg Printing & Publishing*, 434 So. 2nd 1333 (Miss. 1983).

- of an appealable order when an open meeting would have a detrimental effect on the litigating position of the public body.⁴²⁵
3. Transaction of business and discussion regarding the report, development of course of action regarding security personnel or devices.⁴²⁶
 4. Investigative proceedings by any public body regarding allegations of misconduct or violations of law.⁴²⁷
 5. Any body of the legislature which is meeting on matters within the jurisdiction of the body.⁴²⁸
 6. 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.⁴²⁹
 7. Transaction of business and discussion regarding the prospective purchase, sale, or leasing of lands.⁴³⁰
 8. 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.⁴³¹
 9. Transaction of business and discussion concerning the preparation of tests for admission to practice in recognized professions.⁴³²
 10. Transaction of business and discussions or negotiations regarding the location, relocation or expansion of a business or an industry.⁴³³
 11. 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

⁴²⁵ Code, § 25-41-7(4)(b).

⁴²⁶ Code, § 25-41-7(4)(c).

⁴²⁷ Code, § 25-41-7(4)(d).

⁴²⁸ Code, § 25-41-7(4)(e).

⁴²⁹ Code, § 25-41-7(4)(f).

⁴³⁰ Code, § 25-41-7(4)(g).

⁴³¹ Code, § 25-41-7(4)(h).

⁴³² Code, § 25-41-7(4)(i).

⁴³³ Code, § 25-41-7(4)(j).

must be considered in open meetings and final budget adoption must not take place in executive session.)⁴³⁴

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*⁴³⁵ and the provisions of the Act⁴³⁶, 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 and 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.
4. The presiding officer of the public body must then re-open 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

⁴³⁴ Code, § 25-41-7(4)(k).

⁴³⁵ 551 So. 2nd 107 (Miss. 1989).

⁴³⁶ Code, § 25-41-7.

hours; minutes of a meeting conducted by teleconference or video means are subject to the requirements described above....⁴³⁷

The total vote on the question of entering into executive session must be recorded, by the individual members expression, in the minutes.⁴³⁸

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 of the notice shall be made a part of the minutes or other permanent official records of the public body.*⁴³⁹

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.⁴⁴⁰

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.⁴⁴¹ 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.⁴⁴²

Enforcement of the Act⁴⁴³

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

⁴³⁷ Code, § 25-41-11.

⁴³⁸ *Board of Trustees of State Institutions of Higher Learning v. Mississippi Publishers Corp.*, op. cit.

⁴³⁹ Code, § 25-41-13(1). Emphasis added.

⁴⁴⁰ Code, § 25-41-13(2).

⁴⁴¹ *Shipman v. North Panola Consolidated School District*, 641 So. 2nd 1106 (Miss. 1994).

⁴⁴² Maher, February 20, 1992, A.G. Op. #92-0004.

⁴⁴³ Code, §25-41-15.

be done) or writs of mandamus (court order demanding that a specified thing be done) to enforce the Act. If a court finds that a public body has willfully and knowingly violated the provisions of the Act, the court may impose a civil penalty upon the public body in a sum not to exceed \$100.00 plus all reasonable expenses incurred by the person or persons bringing suit to enforce the act.

With regard to enforcement of the Act, 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.”⁴⁴⁴ In addition, any member of the public, including a county supervisor, has the right to enforce the Act in the chancery courts of the state.⁴⁴⁵

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.⁴⁴⁶

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.⁴⁴⁷

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

⁴⁴⁴Wolfe, February 1, 2001, A.G. Op. #2001-0019.

⁴⁴⁵Ibid.

⁴⁴⁶Code, §§ 25-61-1 and 25-61-2.

⁴⁴⁷*State Oil & Gas Board v. McGowan, op. cit.*

records so as to insure their integrity, but the exercise of custodial duties must be in a manner least intrusive to access.⁴⁴⁸

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:

“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.⁴⁴⁹

“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.⁴⁵⁰

“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.⁴⁵¹

“Proprietary software” means data processing software that is obtained under a licensing agreement and is protected by copyright or trade secret laws.⁴⁵²

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:

⁴⁴⁸Ruling 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.

⁴⁴⁹*Code*, § 25-61-3(a).

⁴⁵⁰*Code*, § 25-61-3(b).

⁴⁵¹*Code*, § 25-61-3(c).

⁴⁵²*Code*, § 25-61-3(d).

1. Voter registration lists (including those retained in electronic format);⁴⁵³
2. Applications for voter registration;⁴⁵⁴
3. The records of a municipal water system or water/sewer department (meter reading lists, billings, and individual account documents);⁴⁵⁵
4. Records of Justice Court dealing with both civil and criminal cases (unless otherwise exempted);⁴⁵⁶
5. 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;⁴⁵⁷
6. Activities of a municipality that is participating in a self-insured pool;⁴⁵⁸
7. Books and papers owned by the municipal library;⁴⁵⁹
8. Tariffs of BellSouth;⁴⁶⁰
9. 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.);⁴⁶¹
10. Gross salaries of state employees (but not net salaries and tax exemption status);⁴⁶²
11. A police manual which does not disclose investigative techniques;⁴⁶³

⁴⁵³Molpus, January 16, 1990, A.G. Op. #90-0032.

⁴⁵⁴Ibid.

⁴⁵⁵Thompson, May 13, 1992, A.G. Op. #92-0310.

⁴⁵⁶Erby, April 14, 1993, A.G. Op. #93-0210.

⁴⁵⁷Lanford, December 11, 1998, A.G. Op. #98-0641.

⁴⁵⁸Lee, *op. cit.*

⁴⁵⁹Ellis, April 29, 1993, A.G. Op. #93-0299.

⁴⁶⁰Lanford, June 12, 1998, A.G. Op. #98-0242.

⁴⁶¹Tabb, March 21, 1990, A.G. Op. #90-0181.

⁴⁶²Stringer, March 23, 1994, A.G. Op. #94-0900.

⁴⁶³Evans, September 7, 1995, A.G. Op. #95-0613.

12. 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;⁴⁶⁴
13. 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.);⁴⁶⁵ and,
14. Information, excluding medical information, in “run reports” from a city emergency medical services unit.⁴⁶⁶

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 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.⁴⁶⁷
- ! 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.⁴⁶⁸
- ! 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.⁴⁶⁹
- ! A waste minimization plan and any updates developed by generators and facility operators under the Mississippi Comprehensive Multimedia Waste Minimization Act of

⁴⁶⁴Lanford, April 17, 1998, A.G. Op. #98-0180.

⁴⁶⁵Lanford, June 12, 1998, A.G. Op. #98-0242.

⁴⁶⁶Lawrence, October 6, 1993, A.G. Op. #93-0592.

⁴⁶⁷Code, § 25-61-9(1).

⁴⁶⁸Code, § 25-61-9(2).

⁴⁶⁹Code, § 25-61-9(3).

1990 must be retained at the facility and are not subject to inspection, examination, copying, or reproduction.⁴⁷⁰

- ! 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.⁴⁷¹

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.⁴⁷²

These exemptions include, but are not limited to, certain jury records,⁴⁷³ personnel records,⁴⁷⁴ attorneys' work products,⁴⁷⁵ confidential information furnished by third parties,⁴⁷⁶ individual tax records,⁴⁷⁷ appraisal records,⁴⁷⁸ academic records,⁴⁷⁹ archaeological records,⁴⁸⁰ hospital records,⁴⁸¹ information used for the Birth Defects Registry,⁴⁸² reports of Hepatitis B or HIV carrier status of

⁴⁷⁰ *Code*, § 25-61-9(5).

⁴⁷¹ *Code*, § 25-61-9(6).

⁴⁷² *Code*, § 25-61-11.

⁴⁷³ *Code*, § 9-1-38.

⁴⁷⁴ *Code*, § 25-1-100.

⁴⁷⁵ *Code*, § 25-1-102.

⁴⁷⁶ *Code*, § 25-61-9.

⁴⁷⁷ *Code*, § 27-3-77.

⁴⁷⁸ *Code*, § 31-1-27.

⁴⁷⁹ *Code*, § 37-11-51.

⁴⁸⁰ *Code*, § 39-7-41.

⁴⁸¹ *Code*, § 41-9-68.

⁴⁸² *Code*, § 41-21-205.

health care providers,⁴⁸³ records of the Bureau of Vital Statistics,⁴⁸⁴ records and reports compiled in accordance with the Mississippi Medical Examiner Act of 1986,⁴⁸⁵ information involving ambulatory surgical facilities,⁴⁸⁶ records relating to applications for licenses to carry concealed pistols or revolvers,⁴⁸⁷ investigative and criminal justice records,⁴⁸⁸ environmental self-evaluation reports,⁴⁸⁹ workers' compensation records,⁴⁹⁰ licensure application and examination records,⁴⁹¹ registration information of charitable organizations,⁴⁹² commercial and financial records,⁴⁹³ identity of confidential informants and persons under investigation in hearings conducted under the Public Records Law,⁴⁹⁴ traffic reports prepared by a municipal police department,⁴⁹⁵ complaints filed with and the minutes of the Judicial Performance Commission,⁴⁹⁶ political parties,⁴⁹⁷ information related to investigation or examination under the Mississippi Securities Act,⁴⁹⁸ records maintained by domestic violence shelters,⁴⁹⁹ tape recordings of a public meeting

⁴⁸³ *Code*, § 41-32-7.

⁴⁸⁴ *Code*, § 41-57-2.

⁴⁸⁵ *Code*, § 41-61-63.

⁴⁸⁶ *Code*, § 41-75-19.

⁴⁸⁷ *Code*, § 45-9-101.

⁴⁸⁸ *Code*, § 45-29-1.

⁴⁸⁹ *Code*, § 49-2-71.

⁴⁹⁰ *Code*, § 71-3-66.

⁴⁹¹ *Code*, § 73-52-1.

⁴⁹² *Code*, § 79-11-527.

⁴⁹³ *Code*, § 79-23-1.

⁴⁹⁴ *Code*, § 45-29-1.

⁴⁹⁵ *Code*, § 63-3-417.

⁴⁹⁶ *Const.* § 177A and Brantley, March 26, 1999, A.G. Op. # 99-0131.

⁴⁹⁷ Gardner, March 12, 1999, A.G. Op. # 99-0095.

⁴⁹⁸ *Code*, § 75-71-111.

⁴⁹⁹ *Code*, § 93-21-109.

made by a public board member at his own expense and for his personal use,⁵⁰⁰ police radio logs,⁵⁰¹ and a police officer's daily report.⁵⁰²

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.⁵⁰³

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.⁵⁰⁴

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.⁵⁰⁵

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.⁵⁰⁶

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,

⁵⁰⁰Warren, May 12, 1993, A.G. Op. #93-0340.

⁵⁰¹Whitmore, October 14, 1992, A.G. Op. # 92-0793.

⁵⁰²Ibid.

⁵⁰³Code, § 25-61-5.

⁵⁰⁴Ibid.

⁵⁰⁵Ibid.

⁵⁰⁶Code, § 25-61-7(1).

the purpose or purposes for which the information has been requested, and the commercial value of the information.⁵⁰⁷

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.⁵⁰⁸ 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.⁵⁰⁹ 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 proposed system, equipment, or software.⁵¹⁰ 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.⁵¹¹

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.⁵¹²

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:

⁵⁰⁷ *Code*, § 25-61-7(2).

⁵⁰⁸ *Code*, § 25-61-10(1).

⁵⁰⁹ *Code*, § 25-61-10(2).

⁵¹⁰ *Code*, § 25-61-10(3).

⁵¹¹ *Code*, § 25-61-10(4).

⁵¹² *Code*, § 25-61-13.

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.⁵¹³

⁵¹³*Code*, § 25-61-17.