



A PLACE APART

City of Bay St. Louis
POLICY AND PROCEDURE
Mississippi Public Records Act of 1983

This statement of policy and procedure is drafted and published in compliance with and implementation of the Mississippi Public Records Act of 1983, being Chapter 424 of the General Laws of the State of Mississippi, passed in the Regular Session 1983 of the Mississippi Legislature.

It shall be the policy of the governing authorities of the City of Bay St. Louis that terms, conditions, mandates and otherwise contained in the Mississippi Public Records Act of 1983 shall adhered to in the operation of this City and no policy or policies in contravention of such statute shall be condoned. The Mississippi Public Records Act of 1983 is hereby and herein incorporated by reference and each and every term and condition set forth therein is adopted for the use of this City.

The following procedures in implementation of the referenced Act are hereby and herein adopted and shall be complied with by the City of Bay St. Louis and by any person exercising the right to inspect copy or mechanically reproduce or obtain a reproduction of any public record held and controlled by the City of Bay St. Louis.

1. A person requesting any public record held or controlled by the City of Bay St. Louis (hereinafter, the City) may do so either in writing or form provided by the City or in person on forms provided by the City. In either event, any such request shall be clear and concise and shall include only one subject matter. The date of the request shall be the date such request on proper forms is received by the Municipal Clerk. The Municipal Clerk shall see that each request bears the date of its receipt in a prominent place on its face.

2. The City shall produce or deny all requests for production of documents or records within fourteen (14) working days of the request. Within that period the Municipal Clerk shall notify the person requesting such information as to whether or not such request shall be honored. If the request is to be honored, the notice of such shall contain an estimate of the total cost of compliance with such request. The party requesting production must tender payment in the amount of that estimate before the requested records are produced. The notice shall be timed so as to allow the requested production within fourteen (14) days of the request.
3. The Municipal Clerk shall maintain at all times a file showing all requests made, the subject of the request, whether the same was honored or not, the time frames involved in compliance or in response to the request, and if the request was denied, a written response to the person requesting the same shall be forwarded detailing the reasons for failure to respond favorably to the request. Any such denial and the reasons therefore shall also be kept and maintained as a part of the record system of the Municipal Clerk. All records kept and maintained hereunder shall be preserved for a period of three (3) years from the compliance with or denial of a request.
4. The City shall receive requests for information, on forms prescribed by the City, at the address shown next below:

IN PERSON

Municipal Clerk
Municipal Clerk's Office

Bay St. Louis, MS
39521-2550

BY MAIL

Municipal Clerk
City of St. Louis
P.O. Box 2550
Bay St. Louis, MS
39521-2550

If computer records are requested an additional charge of \$85.00 per hour, or portion thereof, shall be made. Requests made in person shall be during normal business hours (8 a.m. – 5 p.m.) on normal working days. Legal holidays, Saturdays and Sundays are exempt.

5. The City shall charge the person requesting the reproduction of any record at the rate of \$.25 per page and \$.25 per page and \$.50 per page for legal (one side only). In addition, an additional charge of \$8.00 per hour, or portion thereof, shall be made for

time expended in making copies. If research time is utilized in locating and/or determining the eligibility for release of any record requested, the agency shall charge the person requesting the records at the rate of \$17.00 per hour, or portion thereof. Any such charges paid by a person requesting records or public information shall reimburse the City for such services. Costs shall in no instance exceed the actual cost of searching, reviewing and/or duplicating such records and such costs chargeable to a person requesting public information shall include postage. Any cost charged shall be collected by the Municipal Clerk in advance of compliance with a request.

6. It shall be duty of the Mayor, or the acting Mayor, if the Mayor be absent from the City, to evaluate and pass on all requests for information.
7. The Mayor shall advise the City Council at its next regular meeting of all such action taken by him since the Council's last meeting. His report shall be recorded in the minutes of the City.
8. A copy of this policy and procedure statement is available for public inspection at the office of the Municipal Clerk.

The Public Records Act

Title 25, Chapter 61, Mississippi Code of 1972
CHAPTER 61. PUBLIC RECORDS

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§ 25-61-1. Short title

This chapter shall be known and may be cited as the "Mississippi Public Records Act of 1983." It is the policy of the Legislature that public records must be available for inspection by any person unless otherwise provided by this 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.

§ 25-61-2. Policy

It is the policy of this state that public records shall be available for inspection by any person unless otherwise provided by this chapter; 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 public body increases its use of, and dependence on, electronic record keeping, each public body must ensure reasonable access to records electronically maintained, subject to records retention.

§ 25-61-3. Definitions

The following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Public body" shall mean any department, bureau, division, council, commission, committee, subcommittee, board, agency and any 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. Within the meaning of this chapter, the term "entity" shall not be construed to include individuals employed by a public body or any appointed or elected public official.

(b) "Public records" shall mean all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, 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.

(c) "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.

(d) "Proprietary software" means data processing software that is obtained under a licensing agreement and is protected by copyright or trade secret laws.

(e) "Incident report" means a narrative description, if such narrative description exists and if such narrative description does not contain investigative information, of an alleged offense, and at a minimum shall include the name and identification of each person charged with and arrested for the alleged offense, the time, date and location of the alleged offense, and the property involved, to the extent this information is known.

(f) "Investigative report" means records of a law enforcement agency containing information beyond the scope of the matters contained in an incident report, and generally will include, but not be limited to, the following matters if beyond the scope of the matters contained in an incident report:

(i) Records that are compiled in the process of detecting and investigating any unlawful activity or alleged unlawful activity, the disclosure of which would harm the investigation which may include crime scene reports and demonstrative evidence;

(ii) Records that would reveal the identity of informants and/or witnesses;

(iii) Records that would prematurely release information that would impede the public body's enforcement, investigative or detection efforts;

(iv) Records that would disclose investigatory techniques and/or results of investigative techniques;

(v) Records that would deprive a person of a right to a fair trial or an impartial adjudication;

(vi) Records that would endanger the life or safety of a public official or law enforcement personnel, or confidential informants or witnesses;

(vii) Records pertaining to quality control or PEER review activities; or

(viii) Records that would impede or jeopardize a prosecutor's ability to prosecute the alleged offense.

(g) "Law enforcement agency" means a public body that performs as one of its principal functions activities pertaining to the enforcement of criminal laws, the apprehension and investigation of criminal offenders, or the investigation of criminal activities.

§ 25-61-5. Public access to records; denials

(1) (a) Except as otherwise provided by Sections 25-61-9 and 25-61-11, all public records are hereby declared to be public property, and any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of a public body in accordance with reasonable written procedures adopted by the public body concerning the cost, time, place and method of access, and public notice of the procedures shall be given by the public body, or, if a public body has not adopted written procedures, the right to inspect, copy or mechanically reproduce or obtain a reproduction of a public record of the public body shall be provided within one (1) working day after a written request for a public record is made. No public body shall adopt procedures which will authorize the public body to produce or deny production of a public record later than seven (7) working days from the date of the receipt of the request for the production of the record.

(b) If a public body is unable to produce a public record by the seventh working day after the request is made, the public body must provide a written explanation to the person making the request stating that the record requested will be produced and specifying with particularity why the records cannot be produced within the seven-day period. Unless there is mutual agreement of the parties, in no event shall the date for the public body's production of the requested records be any later than fourteen (14) working days from the receipt by the public body of the original request.

(2) If any public record contains material which is not exempted under this chapter, the public agency shall redact the exempted and make the nonexempted material available for examination. Such public agency shall be entitled to charge a reasonable fee for the redaction of any exempted material, not to exceed the agency's actual cost.

(3) Denial by a public body of a request for access to or copies of public records under this chapter shall be in writing and shall contain a statement of the specific exemption relied upon by the public body for the denial. Each public body shall maintain a file of all denials of requests for public records. Public bodies shall be required to preserve such denials on file for not less than three (3) years from the date such denials are made. This file shall be made available for inspection or copying or both during regular office hours to any person upon written request.

§ 25-61-7. Fees incident to providing records

(1) Except as provided in subsection (2) of this section, each public body may establish and collect fees reasonably calculated to reimburse it for, and in no case to exceed, the actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records. Any staff time or contractual services included in actual cost shall be at the pay scale of the lowest level employee or contractor competent to respond to the request. Such fees shall be collected by the public body in advance of complying with the request.

(2) A public body may establish a standard fee scale to reimburse it for the costs of creating, acquiring and maintaining a geographic information system or multipurpose cadastre as authorized and defined under Section 25-61-1 et seq., or any other electronically accessible data. Such fees must be reasonably related to the cost of creating, acquiring and maintaining the geographic information system, multipurpose cadastre or other electronically accessible data, for the data or information contained therein or taken therefrom and for any records, papers, accounts, maps, photographs, films, cards, tapes, recordings or other materials, data or information relating thereto, whether in printed, digital or other format. In determining the fees or charges under this subsection, 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.

§ 25-61-9. Records furnished by third parties

(1) Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction under this chapter until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential.

(2) If any public record which is held to be exempt from disclosure pursuant to this chapter contains material which is not exempt pursuant to this chapter, the public body shall separate the exempt material and make the nonexempt material available for examination and/or copying as provided for in this chapter.

(3) 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 under this chapter.

(4) Misappropriation of a trade secret shall be governed by the provisions of the Mississippi Uniform Trade Secrets Act, Sections 75-26-1 through 75-26-19.

(5) A waste minimization plan and any updates developed by generators and facility operators under the Mississippi Comprehensive Multimedia Waste Minimization Act of 1990 shall be retained at the facility and shall not be subject to inspection, examination, copying or reproduction under this chapter.

(6) 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 Section 75-26-3, and data processing software produced by a public body which is sensitive must not be subject to inspection, copying or reproduction under this chapter.

As used in this subsection, "sensitive" means only those portions of data processing software, including the specifications and documentation, used to:

- (a) Collect, process, store, and retrieve information which is exempt under this chapter.

(b) Control and direct access authorizations and security measures for automated systems.

(c) Collect, process, store, and retrieve information, disclosure of which would require a significant intrusion into the business of the public body.

§ 25-61-10. Use of sensitive software

(1) Any public body that uses sensitive software, as defined in Section 25-61-9, or proprietary software must not thereby diminish the right of the public to inspect and copy a public record. A public body that uses sensitive software, as defined in Section 25-61-9, or proprietary software to store, manipulate, or retrieve a public record will not be deemed to have diminished the right of the public if it either: (a) if legally obtainable, makes a copy of the software available to the public for application to the public records stored, manipulated, or retrieved by the software; or (b) ensures that the software has the capacity to create an electronic copy of each public record stored, manipulated, or retrieved by the software in some common format such as, but not limited to, the American Standard Code for Information Interchange.

(2) A public body shall provide a copy of the record in the format requested if the public body maintains the record in that format, and the public body may charge a fee which must be in accordance with Section 25-61-7.

(3) 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 shall adequately plan for the provision of public access and redaction of exempt or confidential information by the proposed system, equipment or software.

(4) A public body may not enter into a contract for the creation or maintenance of a public records data base if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are on-line or stored in an information technology system used by the public body.

§ 25-61-11. Exempted or privileged records

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 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.

CROSS REFERENCES TO OTHER STATUTES

Academic records exempt from public access, see § 37-11-51.

Appraisal records exempt from access, see § 31-1-27.

Archaeological records exempt from public access, see § 39-7-41.

Attorney work product, examination, exemption, see § 25-1-102.

Birth Defects Registry, see § 41-21-205.

Bureau of vital statistics, access to records, see § 41-57-2.

Charitable organizations, registration information, exemption from public access, see § 79-11-527.

Concealed pistols or revolvers, licenses to carry, records, exemption, see § 45-9-101.
Confidentiality, ambulatory surgical facilities, see § 41-75-19.
Defendants likely to flee or physically harm themselves or others, see § 41-32-7.
Environmental self-evaluation reports, public records act, exemption, see § 49-2-71.
Hospital records, Mississippi Public Records Act exemption, see § 41-9-68.
Individual tax records in possession of public body, exemption from public access requirements, see § 27-3-77.
Insurance and insurance companies, risk based capital level requirements, reports, see § 83-5-415.
Judicial records, public access, exemption, see § 9-1-38.
Jury records exempt from public records provisions, see § 13-5-97.
Licensure application and examination records. exemption from Public Records Act, see § 73-52-1.
Medical examiner, records and reports, see § 41-61-63.
Personnel files exempt from examination, see § 25-1-100.
Public records and trade secrets, proprietary commercial and financial information, exemption from public access, see § 79-23-1.
Workers' compensation, access to records, see § 71-3-66.

§ 25-61-12. Personal information of law enforcement or court personnel and officers; exemption from Public Records Act; exception

(1) The home address, any telephone number of a privately paid account or other private information of any law enforcement officer, criminal investigator, judge or district attorney or the spouse or child of such law enforcement officer, criminal investigator, judge or district attorney shall be exempt from the Mississippi Public Records Act of 1983. This exemption does not apply to any court transcript or recording if given under oath and not otherwise excluded by law.

(2) (a) When in the possession of a law enforcement agency, investigative reports shall be exempt from the provisions of this chapter; however, a law enforcement agency, in its discretion, may choose to make public all or any part of any investigative report.

(b) Nothing in this chapter shall be construed to prevent any and all public bodies from having among themselves a free flow of information for the purpose of achieving a coordinated and effective detection and investigation of unlawful activity. Where the confidentiality of records covered by this section is being determined in a private hearing before a judge under Section 25-61-13, the public body may redact or separate from such records the identity of confidential informants or the identity of the person or persons under investigation or other information other than the nature of the incident, time, date and location.

(c) Nothing in this chapter shall be construed to exempt from public disclosure a law enforcement incident report. An incident report shall be a public record. A law enforcement agency may release information in addition to the information contained in the incident report.

(d) Nothing in this chapter shall be construed to require the disclosure of information that would reveal the identity of the victim.

(3) Personal information of victims, including victim impact statements and letters of support on behalf of victims that are contained in records on file with the Mississippi Department of Corrections and State Parole Board shall be exempt from the provisions of this chapter.

§ 25-61-13. Proceedings to compel public access

The Mississippi Ethics Commission shall have the authority to enforce the provisions of this chapter upon a complaint filed by any person denied the right granted under Section 25-61-5 to inspect or copy public records. Upon receiving a complaint, the commission shall forward a copy of the complaint to the head of the public body involved. The public body shall have fourteen (14) days from receipt of the complaint to file a response with the commission. After receiving the response to the complaint or, if no response is received after fourteen (14) days, the commission, in its discretion, may dismiss the complaint or proceed by setting a hearing in accordance with rules and regulations promulgated by the Ethics Commission. The Ethics Commission may order the public body and any individual employees or officials of the public body to produce records or take other reasonable measures necessary, if any, to comply with this chapter. The Ethics Commission may also impose penalties as authorized in this chapter. The Ethics Commission may order a public body to produce records for private review by the commission, its staff or designee. The Ethics Commission shall complete its private review of the records within thirty (30) days after receipt of the records from the public body. Records produced to the commission for private review shall remain exempt from disclosure under this chapter while in the custody of the commission.

Nothing in this chapter shall be construed to prohibit the Ethics Commission from mediating or otherwise resolving disputes arising under this chapter, from issuing an order based on a complaint and response where no facts are in dispute, or from entering orders agreed to by the parties. In carrying out its responsibilities under this section, the Ethics Commission shall have all the powers and authority granted to it in Title 25, Chapter 4, Mississippi Code of 1972, including the authority to promulgate rules and regulations in furtherance of this chapter.

Any party may petition the chancery court of the county in which the public body is located to enforce or appeal any order of the Ethics Commission issued pursuant to this chapter. In any such appeal the chancery court shall conduct a de novo review. Nothing in this chapter shall be construed to prohibit any party from filing a complaint in any chancery court having jurisdiction, nor shall a party be obligated to exhaust administrative remedies before filing a complaint. However, any party filing such a complaint in chancery court shall serve written notice upon the Ethics Commission at the time of filing the complaint. The written notice is for information only and does not make the Ethics Commission a party to the case.

§ 25-61-15. Penalty

Any person who shall deny to any person access to any public record which is not exempt from the provisions of this chapter or who charges an unreasonable fee for providing a public record may be liable civilly in his personal capacity in a sum not to exceed One Hundred Dollars (\$100.00) per violation, plus all reasonable expenses incurred by such person bringing the proceeding.

§ 25-61-17. Construction

Nothing in this chapter 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.