

BEFORE THE MISSISSIPPI ETHICS COMMISSION

CYNTHIA J. BRANTON

COMPLAINANT

VS.

PUBLIC RECORDS CASE NO. R-24-032

JACKSON COUNTY SHERIFF'S DEPARTMENT

RESPONDENT

FINAL ORDER

This matter came before the Mississippi Ethics Commission through a Public Records Complaint filed by Cynthia J. Branton against the Jackson County Sheriff's Department. Jackson County, Mississippi filed a response to the complaint by and through its attorney. The Ethics Commission has jurisdiction over this matter pursuant to Section 25-61-13, Miss. Code of 1972. A Preliminary Report and Recommendation was issued in this matter on May 2, 2025, in accordance with Rule 5.6, Rules of the Mississippi Ethics Commission. The parties did not object to the Preliminary Report and Recommendation and have thereby waived a right to a hearing on the merits. Accordingly, this Final Order is entered in accordance with Rule. 5.6 of the Rules of the Mississippi Ethics Commission.

I. FINDINGS OF FACT

1.1 Cynthia Branton alleges the Jackson County Sheriff's Department violated the Public Records Act by responding untimely to her request and by attempting to charge excessive fees for public records. On June 24, 2024, Ms. Branton submitted a public records request to the sheriff's department for: (1) the "number of pre-trial detainees in Jackson County who were approved under court order to be transported to a public or private rehabilitation facility while remaining in the custody of Jackson County and receiving time served while physically residing in the rehab facility" and (2) the "number of pre-trial detainees in Jackson County (as described above) who were re-arrested, removed from public or private rehabilitation facilities, and placed back in the Jackson County Adult Detention Center upon formal indictment by a grand jury" from June 2022 to June 2024. Ms. Branton states that on July 17, 2024 she received an estimate of \$800 for responsive documents, and a request to submit a \$25.00 non-refundable service fee if she wanted the documents.

1.2 In response, the sheriff's department concedes that its initial response to Ms. Branton was untimely but that the cost estimates were reasonable and did not violate the law. In their initial response, the sheriff's department explained in writing that the "information requested is not kept in a particular database and would have to be researched individually, which will be very time consuming. This is estimated to take approximately 40-80 hours at \$20.00 an hour. An estimated cost at 40 hours is \$800." The sheriff's department notified Ms. Branton that "[f]or us to start fulfilling your request, please submit the \$25.00 service fee as indicated on the public records request form. Once we receive the service fee, we will begin fulfilling your request. If you do not wish to proceed, please let us know."

1.3 In an attempt to reduce the fee, Ms. Branton amended her request to limit the search to one year, from June 2023 to June 2024. In communications back and forth between her

and the sheriff's department, she asked them to confirm a new estimate. They explained that "We won't know how many hours will accumulate in this request, until it is done. The employee who will be tasked with this will have to stop doing her daily duties to research this information and keep up with the amount of time spent on this request. Once the request is complete, you will be notified of the costs and you will have 14 days to pick up your request or forfeit the nonrefundable deposit." The sheriff's department further clarified, "If it takes her 20 hours to complete the requests then the price will be \$400."

1.4 In the response to the complaint, the sheriff's department explained:

The classifications clerk at the Adult Detention Center concluded she could gather the [requested] information but advised that it would involve searching over 10,000 individual's files, one by one. She also advised that fulfilling the request would consume significant time, effort and resources, and conflict with her daily duties. The work would therefore likely need to be performed after normal business hours, and she estimated the work would take 40-80 hours. Even though the clerk expected to be working after hours to fulfill the request, and therefore be receiving overtime pay, [the public records officer] placed an hourly rate of only \$20.00 per hour on the work. ...

1.5 Ms. Branton requested that the sheriff's department limit the fees to \$100.00, stating that she believed the fee to be exorbitant, and exceed the employee's hourly rate. The sheriff's department stated that the employee competent to do the work was paid more than \$20.00/per hour and declined to limit the fee charged to \$100. In response Ms. Branton filed this complaint with the Ethics Commission.

1.6 The sheriff's department also provided a copy of its public records policy, which requires a requestor to make a non-refundable deposit. The "Schedule of Fees" states that "A non-refundable deposit of \$25.00 is payable upon submission of the request to the Records Division. This deposit will be applied toward the actual costs of searching, reviewing, duplicating and/or mailing the requested records. In the event the individual requesting the record fails to pick up the requested records, within fourteen (14) days, said \$25.00 deposit will be forfeited to the department."

II. CONCLUSIONS OF LAW

2.1 The Mississippi Public Records Act of 1983 (the "Act"), codified at Section 25-61-1, et seq., Miss. Code of 1972, provides that public records shall be available for inspection or copying by any person unless a statute or court decision "specifically declares" a public record to be confidential, privileged, or exempt. Sections 25-61-2 and 25-61-11. Section 25-61-5(1)(a), Miss. Code of 1972, of the Act mandates that "[n]o 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." Section 25-61-5(3).

2.2 Based on the record before the Ethics Commission, it appears the sheriff's department did not timely respond to Ms. Branton's public records request. The department received the request on June 24, 2024 and concedes that it untimely responded on July 17, 2024.

2.3 It should be noted, however, that the request does not appear to ask for identifiable records. It requests "the following information" – "Number of pre-trial detainees...." It does not describe particular records. A person who requests public records must request an identifiable record or class of records before a public body can comply with the request. An "identifiable record" is one that staff of the public body can reasonably locate. An "identifiable record" is not a request for "information." Public records requests are not interrogatories. For example, asking "what policies" a public body has for handling discrimination complaints is merely a request for "information." See Case No. R-16-035.

2.4 Public bodies are not obligated to answer questions or requests for information, but the sheriff's department apparently communicated with the complainant to clarify which documents she was actually seeking. Public employees should not begin searching for records until the requestor has described the requested records well enough that the public employees know with certainty what to look for.

2.5 Additionally, the Public Records Act does not obligate public servants to perform research, and public bodies are never required to compile lists or create records that do not already exist to satisfy a public records request. Scruggs v. Caldwell, 970 So. 2d 1298, 1299 (Miss. App. 2007). If the Jackson County Sheriff's Department did not have lists which were responsive to the request, then the request should have been denied.

2.6 Nonetheless, the \$25.00 non-refundable deposit required by Jackson County Sheriff's Department's public records policy violates the Public Records Act since it is not reasonably calculated to reimburse for actual costs incurred for search, review, duplication and/or mailing of public records, and is non-refundable. Moreover, "public bodies should avoid performing work to produce public records before the requestor has deposited payment of a reasonable estimate 'so that unnecessary costs are not incurred when responding to public records requests where requestors do not intend to pay.'" Bryant v. Jackson State University, Public Records Case No. R-16-028, ¶2.3." R-24-011, ¶2.3.

2.7 Instead of asking for a \$25.00 non-refundable deposit, the sheriff's department should have either denied the request because the records did not exist or required the requestor to deposit the entire estimate of \$400.00 for the amended request covering one year. A public body must collect fees "in advance of complying with the request." Section 25-61-7(1). This pre-payment is a deposit, and any unused deposit must be refunded to the requestor. However, if the actual cost to produce responsive records exceeds the reasonable estimate – for example, if the search for Ms. Branton's records takes 40 or 60 hours instead of 20 – a public body may seek an additional deposit prior to delivering the responsive documents.

III. CONCLUSION

WHEREFORE, it is hereby ordered as follows:

3.1 The Ethics Commission finds the Jackson County Sheriff's Department violated Section 25-61-5 of the Mississippi Public Records Act by failing to timely respond to Ms. Branton's public records request.

3.2 The Ethics Commission finds the Jackson County Sheriff's Department violated Section 25-61-7 of the Mississippi Public Records Act by asking for a \$25.00 non-refundable deposit.

3.3 The Ethics Commission orders the Jackson County Sheriff's Department, through its officials and employees, to strictly comply with the Public Records Act, and finds that further violations may result in the imposition of penalties, including payment of reasonable costs incurred by the person seeking public records.

SO ORDERED, this 27th day of June 2025.

MISSISSIPPI ETHICS COMMISSION

BY: _____
TOM HOOD, Executive Director