

BEFORE THE MISSISSIPPI ETHICS COMMISSION

**ANTONIETTE JOHNSON AND
MARY JACKSON**

COMPLAINANTS

VS.

**PUBLIC RECORDS CASE NOS. R-21-029 & R-21-030
(CONSOLIDATED)**

TOWN OF COLDWATER

RESPONDENT

FINAL ORDER

This matter came before the Mississippi Ethics Commission through two separate Public Records Complaints filed by Antoniette Johnson and Mary Jackson against the Town of Coldwater, Mississippi (the “town”). The town’s city clerk filed a response to both complaints. The Ethics Commission has jurisdiction over these matters pursuant to Section 25-61-13, Miss. Code of 1972. The hearing officer prepared and presented a Preliminary Report and Recommendation to the Ethics Commission at its regular meeting on April 1, 2022. The respondent did not object to the Preliminary Report and Recommendation and has thereby waived a right to a hearing on the merits. Accordingly, the hearing officer enters this Final Order in accordance with Rule 5.6, Rules of the Mississippi Ethics Commission.

I. FINDINGS OF FACT

1.1 On August 9, 2021, Antoniette Johnson requested certified copies of the town’s July 2021 minutes. She made her request in person, in writing. Ms. Johnson followed up on her request on August 19, 2021, leaving her name and number, but received no response.

1.2 On August 5, 2021, Mary Jackson also requested certified copies of the town’s July 2021 minutes, in person, in writing. Ms. Jackson followed up on her request on August 9, 2021, and was informed by the city’s former Deputy Clerk Shawana Caldwell that the minutes were not ready, due to other office duties. Ms. Jackson followed up again on August 13, 2021 and was informed by City Clerk Tanya Felder that “she did not feel comfortable attesting to something she did not do.”

1.3 Both complainants state that the July 2021 minutes were approved by the town’s board of aldermen at its August 3, 2021 minutes, and that the City Clerk was present at that meeting.

1.4 In response to the complaints, City Clerk Tanya Felder explains that her first official day of employment with the Town of Coldwater was August 2, 2021. She states she was provided some notes from the town’s attorney “to type the July minutes for the August 3rd meeting.” She also states that she notified the town’s attorney that she was uncomfortable preparing the minutes, since she nor the city attorney were employed by the town when these meetings took place. At the town’s August 4, 2021 meeting, the city clerk states that “several board members questioned the minutes (even after approving them) requesting several changes.”

Revised minutes for the July 2021 meetings were approved September 2, 2021, and certified the following day.

1.5 Ms. Felder explains that she understands Ms. Johnson's and Ms. Jackson's concerns, but that "these were circumstances I believe to be out of my control as I was not able to verify any of the information that was given me for the minutes." She further explains that she is continuing to learn her new role. Finally, she states that "the Town of Coldwater has since put a policy in place that all minutes will be available seven days after the approval and made available to the public."

1.6 Ms. Felder did attempt to follow up with Ms. Johnson once, but was unable to leave a voicemail. Ms. Felder also states that "a sincere apology was given to Ms. Jackson." Ms. Felder directed the former deputy clerk to call Ms. Johnson and Ms. Jackson to notify them that the records were available, and was not aware until the complaints were filed that neither complainant received these calls.

II. CONCLUSIONS OF LAW

2.1 The Mississippi Public Records Act of 1983 (the "Act") declares that public records shall be available for inspection or copying by any person unless otherwise provided by law. Section 25-61-2, Miss. Code of 1972. Section 25-61-11 provides that the Act shall not be construed to conflict with any other laws of the State of Mississippi or the United States, which specifically declare a public record to be confidential, privileged or otherwise exempt from disclosure.

2.2 Section 25-61-5(1)(a) 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(1)(b) allows up to fourteen working days for production of public records when the public body provides a specific, written explanation why the records cannot be produced within seven days. Section 25-61-5(3) further states that a "[d]enial by a public body of a request for access to or copies of public records under [the Act] shall be in writing and shall contain a statement of the specific exemption relied upon by the public body for the denial."

2.3 It should also be noted that board minutes are more particularly addressed in the Open Meetings Act. Section 25-41-11 of the Open Meetings Act requires public bodies to keep accurate minutes of all meetings, and requires that "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." That is, the Open Meetings Act requires that minutes of public bodies be typed within thirty days after the meeting and be available for public inspection during a public body's regular business hours.

2.4 Once the minutes are finished being typed, they become a public record, even if they have not yet been approved by the board. When a public records request is made for minutes after they have been typed but before they have been approved, the draft minutes should be clearly labelled "draft," preferably by using a watermark, stamp or other marking, and produced in a timely manner under the Public Records Act. Once minutes have been approved

by the public body, they must be available for public inspection during regular business hours. See Open Meetings Case No. M-21-008, Hendrix vs. Jackson Municipal Airport Authority.

2.5 The Town of Coldwater's meeting minutes are clearly "public records." Although the town clerk was not comfortable with providing certified copies of the July 2021 meeting minutes as approved on August 3, 2021, these approved minutes should have been timely produced within seven working days as mandated by the Act. Alternatively, since the town clerk was unwilling to provide a certified copy of the minutes, she could have provided a copy of uncertified minutes with a written statement denying the production of the certified copies, indicating that she was unable or unwilling to provide certified copies due to her understanding that there were errors in the minutes as approved on August 3, 2021. The Public Records Act does not require that copies of public records be certified. Accordingly, the town's failure to timely respond or provide a written denial to Ms. Johnson's and Ms. Jackson's public records requests is a violation of the Public Records Act.

III. CONCLUSION

WHEREFORE, IT IS HEREBY ORDERED as follows:

3.1 The Ethics Commission finds that the Town of Coldwater violated Section 25-61-5 of the Mississippi Public Records Act by failing to timely respond or provide a written denial to both Antoniette Johnson and Mary Jackson for their August 9, 2021 and August 5, 2021 public records requests of the town's July 2021 minutes.

3.2 The Ethics Commission orders the Town of Coldwater to strictly comply with the Public Records Act.

SO ORDERED, this the 19th day April, 2022

SONIA SHURDEN, Hearing Officer
Mississippi Ethics Commission