

BEFORE THE MISSISSIPPI ETHICS COMMISSION

CEDERICK SPENCER

COMPLAINANT

VS.

**PUBLIC RECORDS CASE NOS. R-22-001 & R-22-030
(CONSOLIDATED)**

SENATOBIA POLICE DEPARTMENT

RESPONDENT

FINAL ORDER

This matter came before the Mississippi Ethics Commission through two separate Public Records Complaints filed by Cederick Spencer against the Senatobia Police Department (the “police department”). The Assistant Chief of Police filed a response to both complaints. The Ethics Commission has jurisdiction over these matters pursuant to Section 25-61-13, Miss. Code of 1972. A Preliminary Report and Recommendation of the hearing officer was presented to the Mississippi Ethics Commission on September 2, 2022 in accordance with Rule 5.6, Rules of the Mississippi Ethics Commission. 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 of the Mississippi Ethics Commission.

I. FINDINGS OF FACT

1.1 Cederick Spencer alleges the Senatobia Police Department violated the Public Records Act. Specifically, in the first complaint (R-22-001) he states that on October 1, 2021, he filed a public records request for “a copy of the internal investigation relating to the incident that occurred at Walmart on May 5, 2019.” He requested the police department email him a copy of these records. In his complaint, he notes that he received a written response on October 7, 2021 that the records he requested are available for pick up at the police department for a \$15.00 cash fee. Mr. Spencer concludes that “[u]pon me requesting this they put a warrant out for my arrest for phone harassment because I asked for my own personal records. I feel my rights are being violated.”

1.2 In Mr. Spencer’s second complaint (R-22-030), he states that he emailed a public records request to the police department on June 2, 2022. In this complaint, he failed to attach a copy of his actual request, nor describe what records he was seeking, but states that the police department timely responded on June 10, 2022 via email, to say that responsive documents were available for pick up by him, in person. He further states in his complaint that the police department refused to email responsive documents, and refused to allow his family members to pick up the responsive documents, as he resides over 900 miles away.

1.3 Assistant Chief of Police Matthew Defore responded to both complaints. In response to the first complaint (R-22-001), Mr. Defore, provided some background information as well as described the police department’s response to Mr. Spencer’s request. He states:

On February 21, 2021, I received a written citizen complaint from Cederick Spencer regarding his arrest at Walmart in Senatobia (the arrest occurred on 5, May 2019). He complained that his arrest and encounter with officers in general was improper. An internal investigation of the matter was conducted. On April 5, Mr. Spencer was advised in writing that the internal investigation was complete, the appropriate action was taken and that all content of the internal investigation is unable to be disclosed under the MPRA as personnel information.

From April 2021 through September 2021, Mr. Spencer regularly called the police department while sounding intoxicated and argued with city hall staff (if the call was transferred in), police dispatchers, court staff, myself and Chief Chandler. On September 18, 2021, he called our dispatcher approximately 10 times on a Saturday and cursed her during repeated back-to-back phone calls. For this reason, his phone number was blocked from our non-emergency phone line and a warrant was issued for misdemeanor telephone harassment [under Section] 97-29-45.

On October 6, 2021, Mr. Spencer mailed me a letter, where he requested “a copy of the internal investigation” relating to his arrest, which I treated as a request under the public records act. On October 7, 2021, I emailed Mr. Spencer and told him that the results for his records request awaited his pick up at the police department. Mr. Spencer has made no further attempts to retrieve the records.

The results consist of a letter of denial due to “a copy of the internal investigation” being exempt from disclosure as personnel records.”

1.4 In support of the response, Mr. Defore attached a copy of Mr. Spencer’s October 1, 2021 public records request letter and his October 7, 2021 email response. Mr. Defore also attached a copy of a letter dated October 7, 2021 which indicated that the October 1, 2021 records request was denied, but was not delivered to Mr. Spencer. Finally, he attached a copy of the incident report regarding the telephone harassment that occurred on September 18, 2021.

1.5 In response to the second complaint (R-22-030), Mr. Defore states:

Cederick Spencer has again filed a frivolous complaint with the ethics commission regarding his public records request that we properly produced during the allotted time. Cederick has an active arrest warrant with our agency and he continues to communicate with us via email in attempt to request exempt material about his unserved warrant. The results of his current public records request awaits him at the Senatobia Police Department and he is welcome to pick it up at any time during business hours.

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 Section 25-1-100 specifically exempts personnel records in the possession of a public body from the Public Records Act. Internal affairs investigations are personnel records exempt from disclosure under the Public Records Act. See, Carless v. Madison County Sheriff's Department, Public Records Case R-18-037. Accordingly, the documents requested by Mr. Spencer on October 1, 2021 are exempt from disclosure.

2.4 However, a written denial of a public records request should have been provided to Mr. Spencer within seven (7) working days of his request, without a fee. Accordingly, while the Senatobia Police Department timely responded to Mr. Spencer's October 1, 2021 public records request, instead of insisting that Mr. Spencer retrieve a written denial in person, for a fee, the police department should have simply transmitted the written denial, either by email or U.S. Mail.

2.5 Additionally, information and documents in a law enforcement file, including an affidavit and warrant prior to an arrest, are exempt from the Public Records Act. See, Brown v. Simpson County Justice Court, Public Records Case R-19-009 and Mississippi Att'y Gen Op. No. 2012-00145, Brock (April 20, 2012). That is, pursuant to Sections 25-61-12(c) and 25-61-3(e) and (f), the incident report (which was attached to the first response describing the telephone harassment) would likely be the only non-exempt document responsive to Mr. Spencer's second request, assuming that that Mr. Spencer requested public records related to his arrest warrant. Accordingly, the police department should have provided a copy of the incident report and a written denial for any other documents either by email or U.S. Mail, as well.

2.6 Moreover, it is clear that the incident report could have been provided to Mr. Spencer via email as he requested, as the police department provided a copy to the Ethics Commission electronically, via email. Section 25-61-10 of states, “[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.”

2.7 Finally, pursuant to Section 25-61-15 of the Act, “[a]ny 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.” Since this is the first time

the Ethics Commission has found the Senatobia Police Department to have violated the Public Records Act, no civil penalty is recommended in this case.

III. CONCLUSION

WHEREFORE, IT IS HEREBY ORDERED as follows:

3.1 The Ethics Commission finds that the Senatobia Police Department violated Section 25-61-5 of the Mississippi Public Records Act by failing to transmit a written denial of Mr. Spencer's public records requests.

3.2 The Ethics Commission orders the Senatobia Police Department to strictly comply with the Public Records Act.

SO ORDERED, this the 19th day of September, 2022.

SONIA SHURDEN, Hearing Officer
Mississippi Ethics Commission