

BEFORE THE MISSISSIPPI ETHICS COMMISSION

JACKSON FEDERATION OF TEACHERS

COMPLAINANT

VS.

PUBLIC RECORDS CASE NO. R-23-016

JACKSON PUBLIC SCHOOL DISTRICT

RESPONDENT

FINAL ORDER

This matter came before the Mississippi Ethics Commission through a Public Records Complaint filed by the Jackson Federation of Teachers (“JFT”), by and through its attorney, against the Jackson Public School District (“JPS” or the “district”). The district filed a response by and through its attorneys. The Ethics Commission has jurisdiction over this matter pursuant to Section 25-61-13, Miss. Code of 1972. A Preliminary Report and Recommendation of the hearing officer was issued on April 5, 2024, in accordance with Rule 5.6, Rules of the Mississippi Ethics Commission.

On April 8, 2024, the complainant timely filed an objection to the Preliminary Report and Recommendation but affirmatively waived the right to a hearing on the merits. On May 2, 2024, the district filed a response to the objection. Accordingly, a Final Report and Recommendation was prepared and presented to the commission at its regular meeting held on August 2, 2024, at which time the commission approved this Final Order in accordance with Rule 5.6 of the Rules of the Mississippi Ethics Commission.

I. FINDINGS OF FACT

1.1 The Jackson Federation of Teachers, a teachers union, alleges that the Jackson Public School District violated the Public Records Act by (1) denying JFT’s public records request; (2) requiring that public records requests be mailed or hand-delivered to the district; (3) requiring that public records requests be submitted on its unaltered form; and (4) requiring requestors to agree to pay for unnecessary copies before processing their requests.

1.2 On March, 27, 2023, JFT filed a public records request with the Jackson Public School District for “[a]ny records showing how funds were spent by the District or its insurer in connection with either teacher termination hearings or litigation filed in a court since 2015. This includes specific billable entries as well as documents summarizing amounts spent.” JFT checked the box for “duplication of records,” but slightly altered the district’s form to state:

- That they agreed “to be financially responsible for actual costs incurred in searching, reviewing and *scanning* (if applicable)” but not *duplicating* public records;
- That “no copying costs should be incurred”, and removed the statement that charges for public records would be “Photocopying, Searching & Reviewing - \$0.60 cents per page;” and
- That records should be delivered via email.

1.3 On March 29, 2023, the district, through its general counsel, denied the request, stating “the subject request form was inappropriately altered by the requestor prior to the submission. The altered form does not indicate the requestor’s agreement to be financially responsible for the actual costs incurred for searching, reviewing, and scanning the requested records. While we can transmit the requested records via email (dependent on the size of these files), the actual cost of researching, reviewing and scanning these documents will be assessed and must be paid in advance.” The district also directed JFT to resubmit the request “in accordance with the District’s policy on the appropriate form.”

1.4 On May 3, 2023, JFT’s attorney responded to the denial stating that it should be unnecessary for JFT to resubmit another request, clarifying that JFT did agree to be financially responsible for charges assessed by the District for searching, reviewing and scanning, but “JFT does not agree to ... pay any copying costs – which JPS’s original form would require, which are unnecessary for electronic records.”

1.5 In an email exchange between attorneys for JFT and the district, on May 4, 2023, the district invited JFT to “resubmit the request for consideration, ... via mail or hand delivery on an unaltered request form ...” In response, JFT implored the district to be reasonable and accept its public records request without requiring it to resubmit the request. JPS explained that:

The District has a policy in place that governs all public records requests. I am simply requesting you and your client comply with that policy in order to facilitate timely and efficient processing of any public records requests. The subject policy is available at jackson.k12.ms.us/BoardPolicies.

To be clear, the initial request submitted by your client did not follow the District’s policy regarding public records requests. Therefore, it was denied. Should you or your client wish to submit a proper public records request, please use the provided form (unaltered) and follow the instructions outlined in the District’s policy.

1.6 Following this exchange, JFT filed the complaint with the Ethics Commission, and on May 15, 2023, the district reiterated via an email to JFT’s attorney:

Per our discussion, I clarified that the District is unable to begin compiling these records without your client's agreement to pay for the duplication/copying costs associated with the requested records. As the public records request form outlines, “all applicable charges” must be paid in advance of the District complying with any requests. The District does not mandate any deposit in advance of providing an invoice for applicable costs, however we do require clear indication of an initial willingness to pay said costs. Upon receipt of a signed form, the District will provide an invoice for the cost of producing the requested documents, at which time your client can decide whether or not to provide payment and move forward with their public records request.

1.7 In response to the complaint, the district referenced its policy (BFA). This policy states (in pertinent part):

Section II: REQUESTS FOR ACCESS

Requests for access to public records shall be filed in writing, on forms provided, with the Superintendent of Schools.

...

Section III: FEES CHARGED

Requests for public records, such as information made available for distribution, shall be made available at no charge.

As allowed by statutes for requests made for public records that require staff time to research, review, redact, duplicate, and mail, a charge will be applicable. An additional charge may also be charged for documents that require legal review.

...

The costs of electronic copies of records shall be determined on a case-by-case basis for information on a flash drive. The actual cost of the flash drive plus research and redaction time will be included. The cost of scanning existing District paper or other non-electronic records is actual time (per hour) it takes for completion of scanning. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee or system costs allowed under Mississippi state law.

All applicable charges shall be paid to the district in advance of complying with any requests.

1.8 The district's public records access form states that a requestor must "mail or deliver the completed form to: Jackson Public Schools, Office of District Counsel, 662 S. President Street, Jackson, MS 39201" and "agree to be financially responsible for all charges assessed by the District as actual costs incurred in searching, reviewing, and/or duplicating the public records described above. All applicable charges shall be paid to the district in advance of complying with any requests pursuant to the following schedule: Photocopying, Searching & Reviewing – \$0.60 cents per page."

1.9 In the response to the complaint, the district also explained that "[w]hile the District was/is willing to provide the requested information to the greatest extent possible" it denied the request due to the modifications on the request form made by JFT – that "these unilaterally implicated restrictions on which costs could be assessed in the production of such records (many of which are maintained in hard copy/paper form) were unreasonable and a violation of the Public Records Act." The district noted that it explained to JFT that "due to the sensitive nature (personnel/exempt items/work product concerns) of the requested information ... this broad request would very likely require duplication of records that are in storage, maintained in hard form and require legal redaction/review."

1.10 Finally, the district explains that its requirement that public records requests be submitted via mail or hand-delivery does not "impose[] an unreasonable or unlawful restraint on requestors." The district notes, aside from JFT, it has not received any complaints on this

requirement, and “[o]ver time, this method has proven to be the most efficient manner for the District to receive, track, and manage public records requests in a timely manner as there is currently no electronic platform in place to facilitate these requests.”

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 and places a duty upon public bodies to provide access to such records. Section 25-61-2, Miss. Code of 1972.

2.2 The Act strongly encourages all public bodies to adopt “reasonable written procedures ... concerning the cost, time, place and method of access [to public records], and [to give] public notice of the procedures.” However, there is no statutorily required format for a valid public records request. Comment 3.6 to Rule 3, Mississippi Model Public Records Rules. “A request can be sent in by mail. A request can also be made by email, fax, or orally. A request should be made to the public body's public records officer. A public body may prescribe means of requests in its rules.” *Id.*

2.3 In reviewing the district’s policy BFA, it appears the district has adopted reasonable written procedures. However, contrary to the district’s assertions, the district did not adopt a public records policy that requires all public records requests be submitted by mail or hand-delivery only. Instead, Section II of its policy only requires that public records requests “be filed in writing, on forms provided, with the Superintendent of Schools.” Thus, this requirement should be satisfied with mail, hand-delivery, express delivery service, e-mail, and/or facsimile delivery of a completed public records request form to the superintendent. As such, the district’s refusal to accept the complainant’s public records request via email is contrary to the plain reading of its policy and is a violation of the Public Records Act.

2.4 Moreover, the district’s refusal to accept the public records request on a slightly altered form was unreasonable and violates the Act. In this case, the requestor changed the form to indicate that it was requesting electronic records. In light of the fact that the district’s form did not provide a place for a requestor to indicate that electronic delivery of responsive records was sought, this alteration to the form did not establish a reasonable basis to deny JFT’s public records request.

2.5 Additionally, JFT changed the form to remove its acceptance of a \$0.60 per page charge for “photocopying, searching & reviewing.” This rate does not appear in the district’s public records policy BFA but only on its public records request form.

2.6 A 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.” Section 25-61-7(1). Public bodies are also “entitled to charge a reasonable fee for the redaction of any exempted material, not to exceed the agency's actual cost.” Section 25-61-5(2). “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.” Section 25-61-7(1). A public body must collect fees “in advance of complying with the

request.” *Id.* This pre-payment, when based upon a reasonable estimate of the actual cost, is a deposit. See Comment 8.4(1), Mississippi Model Public Records Rules.

2.7 A public body may never charge more than the “actual cost” of providing access to public records. Any attempt by a public body to impose fees exceeding actual costs reasonably incurred constitutes a willful and knowing denial of access to public records that warrants the imposition of a civil penalty and the award of attorney fees and costs against the public official charging the excessive cost. Harrison County Development Commission v. Kinney, 920 So. 2d 497, 503 (Miss. App. 2006). See also Comment 8.5(4), Mississippi Model Public Records Rules. The same can be said for an estimate that is so high it does not reasonably reflect the actual costs the public body expects to incur in responding to a records request.

2.8 “[A] public body should provide a reasonable estimate of the time and costs it will take to fully respond to the request.... To provide a ‘reasonable’ estimate, a public body should not use the same estimate for every request. A public body should roughly calculate the time it will take to respond to the request and send estimates of varying lengths, as appropriate. There is no standard amount of time for fulfilling a request so reasonable estimates should vary.” Comment 4.3(6), Mississippi Model Public Records Rules. Unfortunately, the district did not provide JFT with an estimate but insisted that JFT must agree to pay costs which had not yet been estimated. That approach is incorrect and inconsistent with the Public Records Act. A public body has no authority to require that a requestor agree to unspecified costs and no obligation to provide records to a requestor who refuses to pay a reasonable estimate of actual costs. Rather, the district should have provided JFT with a reasonable estimate of its actual costs of providing the records and waited for JFT to deposit the amount of the estimate before beginning to produce the records.

2.9 The district failed to provide any evidence that the \$0.60 per page flat fee for “photocopying, searching & reviewing.” is reasonably calculated to reimburse the district for the actual costs incurred for searching, reviewing, duplicating and/or mailing public records and is thus inconsistent with the Act. As explained in Comment 8.1, Mississippi Model Public Records Rules, if a public body opts for the default copying charge of fifteen cents per page, it need not calculate its actual costs. Yet if a public body charges more than \$0.15/page for duplicating records, then the public body must justify the higher cost.

2.10 The complainant requests, in his April 8, 2024 objection to the Preliminary Report and Recommendation, that the commission award JFT attorney’s fees incurred in seeking the public records. 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.”

2.11 While there is some basis to award JFT attorney’s fees in this case, the award of attorney’s fees is wholly in the discretion of the Ethics Commission. In this case JFT requested attorney’s fees for the first time in its objection and failed to request for attorney’s fees in the complaint. Secondly, JFT simply requested an amount of \$237.50, without providing sufficient evidence that the amount is reasonable. “In order to recover attorney’s fees, a party ‘must furnish an evidentiary predicate therefor.’” Lane v. Lampkin, 234 So.3d 338, 351 (Miss. 2017) (quoting

Key Constructors, Inc. v. H & M Gas Co., 537 So.2d 1318, 1325 (Miss. 1989). “An award of attorneys’ fees must be supported by credible evidence and should not be plucked out of the air.” Grand Biscayne 670, LLC v. 14510 Lemoyne Boulevard, LLC, No. 1:18CV357-HSO-JCG, 2019 WL 1714477, at *4 (S.D.Miss. Apr. 17, 2019). In Mississippi, the issue of attorneys’ fees must be appropriately considered in light of Miss. R. Prof. Conduct 1.5(a) and the McKee factors. See, Tupelo Redevelopment Agency v. Gray Corp., 972 So.2d 495, 522 (Miss. 2007). The McKee factors are:

the relative financial ability of the parties, the skill and standing of the attorney employed, the nature of the case and novelty and difficulty of the questions at issue, as well as the degree of responsibility involved in the management of the cause, the time and labor required, the usual and customary charge in the community, and the preclusion of other employment by the attorney due to the acceptance of the case.

McKee v. McKee, 418 So.2d 764, 767 (Miss. 1982). In this case, the complainant failed to provide any evidence of the reasonableness of his request for attorneys’ fees. Finally, this is the first time that the Ethics Commission has found the Jackson Public School District to have violated the Public Records Act. Accordingly, an award of attorneys’ fees was not recommended by the hearing officer in this case.

WHEREFORE, it is hereby ordered as follows:

3.1 The Ethics Commission finds the Jackson Public School District violated Section 25-61-5 of the Mississippi Public Records Act by denying Jackson Federation of Teachers’ public records request.

3.2 The Ethics Commission orders the Jackson Public School District to revise their current public records policy to comport with the Mississippi Public Records Act and the Mississippi Model Public Records Rules, within thirty (30) days of the issuance of a Final Order in this case.

3.3 The Ethics Commission orders the Jackson Public School District to provide Jackson Federation of Teachers a cost estimate for providing the requested records, within seven (7) days of the adoption of a revised public records policy.

3.4 The Ethics Commission orders the Jackson Public School District, through its officials and employees, to strictly comply with the Public Records Act.

SO ORDERED, this 2nd day of August 2024.

MISSISSIPPI ETHICS COMMISSION

BY: _____
TOM HOOD, Executive Director