

BEFORE THE MISSISSIPPI ETHICS COMMISSION

CHERYL OGUNBOR

COMPLAINANT

VS.

PUBLIC RECORDS CASE NO. R-22-021

WALTHALL COUNTY JUSTICE COURT

RESPONDENT

FINAL ORDER

This matter came before the Mississippi Ethics Commission through a Public Records Complaint filed by Cheryl Ogunbor against the Walthall County Justice Court. 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 January 6, 2023. 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 Cheryl Ogunbor sought records from the Walthall County Justice Court, because she “has two pending cases in Justice Court, where this information is necessary.” Ms. Ogunbor states in her complaint that because she was representing herself *pro se*, the court clerk refused to provide her copies of court records. “They have even told me that they will give it to an attorney, but not to me and told me to get an attorney so he can get the documents.”

1.2 Specifically, on April 7, 2022, Ms. Ogunbor requested some documents from the Walthall County Justice Court Clerk’s office in person, and was denied. She returned to the office the next day and was refused again. Ms. Ogunbor asked an attorney friend, Michael Lewis, Sr., to request the documents for her, who spoke with the County Attorney, Conrad Mord. In an email from Mr. Lewis to Ms. Ogunbor, he states that in a phone conversation with the Justice Court Clerk, Meshandra McGee, “She confirmed that you are not allowed to see the Justice Court docket because they are not available to the public.” He then states that he spoke to the county attorney who “informed me that the Justice Court docket is a public record and you may inspect the complete docket concerning your case. If your request is burdensome or goes beyond your own docket then the request may be subject to the Mississippi Public Records Act.”

1.3 After receiving this email, Ms. Ogunbor called and spoke to the Justice Court Clerk, and was told that she could come to the office to get copies, “now that she also spoke with Mr. Mord.” She then received a follow-up call from the clerk who stated that the records would not be given and Ms. Ogunbor needed to speak to the county attorney. Unable to reach the county attorney by phone, or in person, Ms. Ogunbor submitted a written request for the following:

1. A copy of the Justice Court Docket Sheet for the Civil cases heard before Judge Ryan Bruhl on March 17, 2022 at 1:30 p.m.;

2. A copy of the Justice Court Notice to Appear in Court that was sent to each litigant, that is listed on the Docket Sheet, to appear in Court on March 17, 2022, at 1:30 p.m. before Judge Ryan Bruhl, in the civil cases, whether they appeared or not;
3. The Name, address and phone number of each Representative of the Credit Buying Company that appeared in Justice Court on behalf of the (Plaintiff) Credit Company, in the Civil cases before Judge Ryan Bruhl on March 17, 2022 at 1:30 p.m.

1.4 Ms. Ogunbor followed up by phone on her public records request on April 13, 2022, and was told that the documents were ready. She was unaware that some of the documents would be denied, and received only the portion of the docket for March 17, 2022 that was related to her cases. She received a letter from the county attorney stating that all other parts of her public records request was denied. The letter specifically stated:

1. The Mississippi Supreme Court's "Statement of Policy Regarding Openness and Availability of Public Records", adopted by Administrative Order on August 27, 2008 provides that "The judiciary of the State of Mississippi, as a separate and equal branch of the government, is not subject to the Mississippi Public Records Act." The statement goes on to provide that All information utilized in furtherance of the business of the Courts, including but not limited to, information used in the development of orders, judgments and opinions, is nonpublic and is exempt and excepted from disclosure."
2. The Mississippi Legislature passed Section 9-1-38, *Mississippi Code of 1972 Annotated*, which provides that "Records in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, which are developed among judges and among judges and their aides, shall be exempt from the provisions of the Mississippi Public Records Act of 1983."
3. Furthermore, after researching opinions rendered by the Mississippi Ethics Commission, which enforces the provisions of the Mississippi Public Records Act of 1983, it appears that these records are exempt.

1.5 In her complaint, Ms. Ogunbor argues that the denial was improper, and requests the Ethics Commission to order "the Walthall County Justice Court to be compelled to allow the inspection of all (I believe it's less than 20) of the Civil court case files from March 17, 2022 at 1:30 p.m. and a copy of the complete docket sheet with every case listed that was set before Judge Ryan Bruhl on that date." She requests that the "Commission spell out in writing that a place to sit and review the documents be provided because there is no place to put papers down in the small tiny office of the clerk, however, there is space and a desk to inspect the documents/files in the hallway or the court room." Finally, Ms. Ogunbor request that the commission grant her reasonable expenses, because the denial of these public records has caused her to "file a MOTION TO STAY the proceedings that was scheduled for April 17, 2022..., pending receipt of this information, which assuredly has caused her more work and preparation of two MOTIONS TO STAY in two different cases, copy charges, certified mailing, and precious time, gas and travel time."

1.6 In response to the complaint, the County Attorney filed a responsive letter restating the statements and denial in the April 13, 2022 denial letter to Ms. Ogunbor.

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 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 and Section 25-61-5. “Public records” are defined as all documents or records “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.” Section 25-61-3(b).

2.2 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. “A public body must provide access to public records upon the request of any person, unless a statute or court decision specifically declares a public record to be confidential, privileged or exempt.” Section 25-61-11.

2.3 The Walthall County Justice Court asserts three bases for denying Ms. Ogunbor’s request for records. First, the response claims, in reliance on the introduction in the Mississippi Supreme Court’s “Statement of Policy Regarding Openness and Availability of Public Records” adopted by Administrative Order on August 27, 2008, the judiciary, including the Justice Court and the Justice Court Clerk, is not subject to the Mississippi Public Records Act. However, this assertion misconstrues the meaning of this statement, erroneously conflating non-exempt court filings with documents that are developed by judges, such as notes and internal memoranda, which are exempt from the Act pursuant to Section 9-1-38. Furthermore, this “Statement of Policy,” which appears to be the public records policy of the Supreme Court, does not apply to county justice courts.¹

2.4 Documents filed with court clerks for court proceedings, i.e., “court filings” are clearly public records, subject to the Public Records Act. The Mississippi Supreme Court and the Mississippi Appellate Court have repeatedly stated this in its decisions. Court files can only be closed to the public after notice and hearing. Gannett v. Hand, 571 So.2d 941 (Miss. 1990). Failure to follow the process of closing files can also violate the First Amendment rights of the press and public. Id. “Court filings are public records unless such filings are excluded from the Public Records Act.” Henry v. Miss. Dept. of Employment, 962 So.2d 94, 98 (Miss. App. 2007). “Mississippi law favors public access to public records” Estate of Cole v. Ferrell, 163 So. 3d 921, 925 (Miss. 2012). “Court filings are considered to be public records, unless otherwise exempted by statute.” Id. “The law allows courts to determine when information should be declared confidential or privileged, exempting it from the Public Records Act.” Id. at 929. Moreover, the Mississippi Attorney General’s Office has also issued at numerous opinions² stating

¹ The introduction to the policy states, “The judiciary of the State of Mississippi, as a separate and equal branch of the government, is not subject to the Mississippi Public Records Act.” This assertion is overly broad and patently incorrect, as every Mississippi court is an entity of the state, a political subdivision or a municipal corporation and, therefore, a “public body” as defined in Section 25-61-3(a).

² “Court records are “public records” as defined in the Mississippi Public Records Act. Miss. Code Ann. Sec. 25-61-3(b) (Rev. 2010). As such, court records are available for inspection by any person unless exempt by law or protected

that “[t]here is no question that a Justice Court Clerk's Office is a public office and the public has an absolute right to inspect all public dockets and other public records.” Miss. Att’y Gen. Op. 19980701, Moffett, July 1, 1988.

2.5 The second basis for denying Ms. Ogunbor’s request was based on the exemption contained in Section 9-1-38, Miss. Code of 1972, which provides that “[r]ecords in the possession of a public body . . . which are developed among judges and among judges and their aides, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.” That is, documents, notes, memos, etc. “developed among judges and among judges and their aides,” such as law clerks, stenographers/court reporters or others employed by the court (see, Robinson v. Lowndes County Circuit Court, Public Records Case R-15-010) are exempt from the Public Records Act.

2.6 The third basis asserted for denying Ms. Ogunbor’s request, was that the Mississippi Ethics Commission has issued opinions stating that these records are exempt. However, this assertion was not supported by citations to any applicable opinions. Instead, the Ethics Commission has maintained that “court files maintained by [a court] clerk are public records, and the clerk’s office must provide [an individual requesting access pursuant to the Public Records Act] reasonable access to these files.” Bologna v. Grenada County Circuit Clerk, Public Records Case No. R-20-005. See also, Tom v. Madison County Circuit Clerk, Public Records Case No. R-18-029; Fitzgerald v. Forrest County Circuit Court Clerk, Public Records Case No. R-14-037; Royals v. City of Forest, Public Records Case No. R-21-013.

2.7 In this case, the complainant was seeking a copy of the justice court judge’s docket sheet on a particular day, “Justice Court Notice[s] to Appear in Court” and contact information for individuals that appeared in court on that day. While the third item requested is simply a request for information, and does not sufficiently identify a public record³, the docket and the summons (the notices that Ms. Ogunbor references in her complaint) are clearly identifiable public records.

by an order of the court.” Miss. Att’y Gen. Op. 2013-00077, Berryman, March 22, 2013. “The court clerk is responsible for following the Public Records Act which is codified at Mississippi Code Annotated Sections 25-61-1 et. seq.” Miss. Att’y Gen. Op. 2000-0486, Shirley, August 28, 2000. “There is no statutory provision that requires a clerk to send a certified copy of the case to the judge after disposition of the case. However, to the extent that such documents are public records, anyone may request a copy of said documents subject to your public records policy.” Miss. Att’y Gen. Op. 96-0407, Maness, June 21, 1996. “[R]ecords in [the Justice Court Clerk’s] office, including traffic tickets, are public records unless they are exempt by statutory provision.” Miss. Att’y Gen. Op. 95-0378, Aldridge, June 28, 1995. A “[justice court] clerk is required to make the dockets, which are public records, available for reasonable inspection by the public. See Section 25-61-5, MCA, 1972, as amended, which provides for public access to public records.” Miss. Att’y Gen. Op 94-0695, Corviss, October 5, 1994. “[A] justice court clerk must, upon written request and pursuant to the Public Records Act, provide copies of or access to public records possessed by her, [but] she is not required to do research for or to request documents in the possession of other courts in the state.” Miss. Att’y Gen. Op No. 94-0342, Moyer, June 27, 1994. “As you know, records maintained in a computer database are public records. Miss. Code Ann. Section 25-61-3. We know of nothing that would exempt the justice court civil docket, kept on computer, from the public records law.” Miss. Att’y Gen. Op. 94-0244, Cruber, May 2, 1994. “[T]he public has the right to inspect [court files in the Justice Court with which they have no connections] unless they are exempted from the Public Records Act by some other provision. . . . Individuals have a right to examine public records in the office of the clerk during regular office hours but may not disrupt the work of the clerk and staff.” Miss. Att’y Gen. Op. 93-0210, Erby, April 14, 1993.

³ See, Laster v. City of Grenada, Public Records Case R-16-035. “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’ in general. Public records requests are not interrogatories.”

A Justice Court docket is maintained by the Justice Court Clerk, and the summonses are issued by the Justice Court Clerk. See Rules 5(b) and 14, Rules of Justice Court. As such, these documents are not records “developed ... among judges and their aides” but are created and maintained by the Justice Court Clerk and are not exempt from the Public Records Act. To deny Ms. Ogunbor reasonable access to the docket and summons that she requested is a violation of the Public Records Act.

2.8 In her complaint, Ms. Ogunbor also requests access to records that she did not list in her public records request, namely, “inspection of all ... of the Civil court case files from March 17, 2022 at 1:30 p.m.” Again, while “[c]ourt filings are considered to be public records, unless otherwise exempted by statute,” Ferrell at 925, from the record in this case, Ms. Ogunbor has not yet properly requested access to inspect these case files, and access has not yet been denied by the Walthall County Justice Court Clerk.

2.9 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 Walthall County Justice Court Clerk’s office to have violated the Public Records Act, no civil penalty is currently recommended in this case.

III. CONCLUSION

WHEREFORE, IT IS HEREBY ORDERED as follows

3.1 The Ethics Commission finds that the Walthall County Justice Court Clerk’s office violated Section 25-61-5 of the Mississippi Public Records Act by denying Ms. Ogunbor’s public records request for a copy of the justice court judge’s docket for March 17, 2022 at 1:30 p.m. and copies of the summons issued by the Justice Court Clerk ordering defendants to appear on March 17, 2022 at 1:30 p.m.

3.2 The Ethics Commission orders the Walthall County Justice Court Clerk to provide the complainant the responsive documents identified in the above paragraph within seven working days from receipt of a final order in this case.

3.3 The Ethics Commission orders the Walthall County Justice Court Clerk’s office, through its officials and employees, to strictly comply with the Public Records Act, and find 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 the 23rd day of January, 2023.

SONIA SHURDEN, Hearing Officer
Mississippi Ethics Commission