

**BEFORE THE MISSISSIPPI ETHICS COMMISSION**

**GREGORY EDWARD MANTELL**

**COMPLAINANT**

**VS.**

**PUBLIC RECORDS CASE NOS. R-22-029**

**UNIVERSITY OF MISSISSIPPI**

**RESPONDENT**

**FINAL ORDER**

This matter came before the Mississippi Ethics Commission through a Public Records Complaint filed by Gregory Edward Mantell against the University of Mississippi (the “university”). The university filed a response 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 of the hearing officer was prepared in accordance with Rule 5.6, Rules of the Mississippi Ethics Commission and presented to the Commission at its regular meeting on July 7, 2023. The university filed an objection on July 25, 2023. The hearing officer presented a Final Report and Recommendation to the Ethics Commission at its regular meeting held on October 6, 2023, at which time the commission approved this Final Order.

**I. FINDINGS OF FACT**

1.1 Gregory Mantell alleges that the University of Mississippi violated the Public Records Act by denying his public records requests and charging excessive fees. Mr. Mantell submitted three public records requests requesting:

- On May 6, 2022<sup>1</sup>, “all emails between Patricia Thompson, director of ACEMJC [Accrediting Council on Education in Journalism and Mass Communication], and its board member[s] regarding the 2021 resolution of Diversity, Equity, Inclusion, and Social Justice from September 1, 2021 to September 15, 2021” and “copies of her employment contract and pay records/salary information”
- On May 17, 2022<sup>2</sup>, “copies of all emails sent by Patricia Thompson, director of ACJMC, regarding any of the following: Black Lives Matter, BLM, Nikole Hannah-Jones, 1619 Project, University of North Carolina, Chapel Hill (UNC), Walter Hussman, tenure between May 1, 2021, and May 17, 2022.
- On May 26, 2022, “all emails sent by, or received by, Patricia Thompson, an assistant dean and professor at the university ... concerning the 2021

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<sup>1</sup> Mr. Mantell’s public records request was dated May 6, 2021, but Mr. Mantell provided evidence that the public records request was submitted on May 6, 2022.

<sup>2</sup> Mr. Mantell’s second public records request was dated May 17, 2021, but Mr. Mantell provided evidence that the public records request was submitted on May 17, 2022.

ACEMJC resolution on Diversity, Equity, Inclusion, and Social Justice between 9/1/2020 and 5/26/2022.”

1.2 On May 26, 2022, in response to Mr. Mantell’s May 6, 2022, request, the university provided a copy of the employment contract and salary information but denied his request for the emails. In its denial, the university asserted that the emails are not public records, as “[t]he remainder of your request does not request records of the ‘business, transaction, work, duty or function’ of the University.”

1.3 Mr. Mantell disputed the university’s denial via email, stating that the emails requested were public records “since Ms. Thompson’s employment contract with the university specifically states she is being hired as Exec. Dir. of ACEMJC as well as Asst. Dean for Student Media and professor of journalism.” Mr. Mantell also filed his May 26, 2022, request, which included the emails originally requested in his May 6, 2022, request, expanding the dates for his request and specifically listing emails sent or received by Ms. Thompson’s university email address. On June 3, 2022, Mr. Mantell received a denial letter stating, “The University has identified no records of the University responsive to your May 26 request.”

1.4 In response to Mr. Mantell’s second public records request, on June 3, 2022, the university notified Mr. Mantell that there were some responsive records and provided a cost estimate of \$185.18 to provide those records. Mr. Mantell argues that this cost is excessive, as only eighteen (18) emails were produced. Mr. Mantell states that he requested an itemized cost estimate, and was provided the following:

- IT email search and extraction: \$114.56
- Paralegal review of 1,053 emails: 3 hours \$70.62

1.5 In response to the complaint, the university argues that the majority of the emails responsive to Mr. Mantell’s request are not “public records of the University because these emails are not records related to the ‘business, transaction, work, duty or function’ of the University.” The University asserts that ACEJMC is not a public body, and that the excluded emails relate to the “business, transaction, work, duty or function” of ACEJMC, which were sent or received from an email address provided by a public body. The university relies on Public Records Opinion No. R-14-001, where the commission opined that “The utilization of a government computer or email address is not determinative as to whether an electronic record qualifies as a public record. Rather, the purpose or use of the record is the determining factor.” (Emails sent by teachers that do not relate to the school district’s governmental function of public education may not qualify as public records subject to the Act.) The university contends that the majority of the requested emails primarily address the following areas: “(1) the ACEJMC resolution; (2) the ACEJMC newsletter; (3) ACEJMC meetings; and (4) the accreditation review process of other institutions.”

1.6 Finally, the university states that the IT email extraction cost is \$114.56 for the May 17, 2022, request, and \$85.95 for the May 26, 2022, request. The university also states that to date, it has spent 18 hours reviewing the 1,133 extracted emails, at a cost of \$423.72.

1.7 The university provided a copy of the emails to the hearing officer for private review under Section 25-61-13 of the Act. The complainant provided a copy of the professor’s

employment agreement with the University, and the university provided a copy of a “Revised Services Agreement” between ACEJMC and the university.

1.8 Professor Thompson’s employment agreement with the university, between herself (as “employee”) and The Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, for the period between July 1, 2021 and June 30, 2022, was for the position “Assistant Dean for Student Media and Assistant Professor of Journalism/Executive Director, ACEJMC at the University of Mississippi.” This simple one-page employment contract did not identify Professor Thompson as an employee of ACEJMC, and included an addendum that states:

The Employee acknowledges that this employment contract is funded in whole or in part by restricted grants, gifts or contracts, and that in addition to other provisions contained in this contract, the Board shall have the authority to modify or terminate this contract if funding ceases or reduce the contract if funding is not sufficient to fully satisfy the terms of this contract.

1.9 The Revised Services Agreement between the university and ACEJMC covers a period between July 1, 2018, through June 30, 2023, and states that the University of Mississippi “agrees to perform for [ACEJMC] the services described in Attachment 1, ... under the direction of [the university’s] employee, Patricia Thompson.” Attachment 1 specifically states:

Professor Thompson, Assistant Dean for Student Media and Assistant Professor of Journalism in the Meek School of Journalism and New Media, will serve as Executive Director of ACEJMC.

Professor Thompson is a 12-month employee, and ACEJMC is paying approximately 78% of her total compensation to serve as Executive Director. ACEJMC will provide \$135,000 per year for this purpose.

The University will hire a Project Coordinator to support Professor Thompson in these activities. ACEJMC will provide \$45,000 per year for this purpose.

...

1.10 The Revised Services Agreement Attachment also referenced a June 3, 2018 email between Peter Bhatia, ACEJMC President and Professor Thompson, in which he confirmed that she was “hir[ed] as executive director of the Accrediting Council on Education in Journalism and Mass Communications, [where she] will continue to be based on the University of Mississippi and will hold a joint appointment with the Meek School of Journalism and New Media.” The email goes on to state that ACEJMC will “contribute \$125,000 annually” to the university for her compensation, that she will supervise two employees, including one who will be hired by the university “to work with you at ACEJMC’s new base in Oxford, [for which] ACEJMC will contribute up to \$45,000 [to the university] towards the annual compensation.” Finally, the email concludes that Professor Thompson will “report to the Council’s president and the executive committee of the Council....”

1.11 In its objection to the Preliminary Report and Recommendation, the university stresses that emails sought by the complainant “relate to the work of ACEJMC, which is a private

entity that acts as the accrediting body for journalism schools in the United States and internationally.” The university notes that ACEJMC in fact accredits the University’s journalism school and is a separate entity from the university. The university states that:

...Ms. Thompson was hired by ACEJMC to be its Executive Director – a position she continues to hold even though she has left the University. The evidence shows that ACEJMC paid the University for the time Ms. Thompson spent performing work for ACEJMC.

1.12 In light of the fact that Ms. Thompson’s work for ACEJMC was not supervised or assigned by the university, while employed by the university to serve as an Assistant Dean, Assistant Professor and Executive Director of ACEJMC, the university argues that the requested records are not the business, transaction, work, duty or function of the university, “when ACEJMC is a separate private entity that selected Ms. Thompson as Executive Director of ACEJMC, directed her work for ACEJMC, and supervised her work at ACEJMC. If Ms. Thompson’s duties as Executive Director were part of her duties for the University, it would not have been necessary for ACEJMC to pay the University for the time that Ms. Thompson spent working for ACEJMC.”

1.13 Finally, the university states the following:

University faculty often become involved with private professional organizations in their field of study and undertake leadership positions with these private organizations to enhance their academic reputation and the reputation of the University. A determination that a faculty member’s work for a private entity brings the business of the private entity within the scope of Mississippi’s public records law will have far reaching implications and could lead these private organization to shy away from providing opportunities to our professors in order to avoid being subject to Mississippi’s public records laws.

## 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. “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). A public body must provide access to public records upon 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.

2.2 The University of Mississippi is a public body subject to the Mississippi Public Records Act, while ACEJMC is not. However, ACEJMC contracted with the university, not Professor Thompson, individually. Through this contract, it is clear that the university undertook to perform the Executive Director duties for ACEJMC through Professor Thompson, as directed by ACEJMC. As such, these duties became the “business, transaction, work, duty or function” of the university.

2.3 Instead, had the university reduced Professor Thompson's salary and duties, and required her to individually contract with ACEJMC, it would be less likely that these emails would be subject to the Public Records Act, even if they had been sent and received by Professor Thompson's university email address. However, when a private entity contracts with a university to provide certain services to be performed by university employees, those services become the "business, transaction, work, duty or function" that that university. In the future, the public bodies, such as the university, should be cognizant that when it contracts with private entities to provide services, those private entities may be forgoing a measure of privacy, since public bodies - funded by public funds - are subject to the Mississippi Public Records Act. The university and its employees must balance the desire to enhance their academic reputations with the statutorily mandated transparency required by the Act.

2.4 However, to the extent that these public records contain trade secrets or confidential commercial or financial information of a proprietary nature, the university should notify ACEJMC that the documents have been requested pursuant to a public records request and will be produced to the requestor in twenty-one (21) days, unless ACEJMC files a petition in chancery court seeking a protective order. This procedure is outlined in Section 25-61-9, which states:

(1) Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction under this chapter until notice to third parties has been given, but the records shall be released no later than twenty-one (21) days from the date the third parties are given notice by the public body unless the third parties have filed in chancery court a petition seeking a protective order on or before the expiration of the twenty-one-day time period. Any party seeking the protective order shall give notice to the party requesting the information in accordance with the Mississippi Rules of Civil Procedure.

(2) If any public record which is held to be exempt from disclosure pursuant to this chapter contains material which is not exempt pursuant to this chapter, the public body shall separate the exempt material and make the nonexempt material available for examination or copying, or both, as provided for in this chapter.

2.5 Moreover, 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). "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." *Id.* 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.

2.6 However, a public body may not charge more than the "actual cost" of providing access to public records. A public body is required to refund any fees collected in excess of the actual time and cost to process public records requests. 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 that it does not reasonably reflect the actual costs the public body expects to incur in responding to a records request.

2.7 Based on the record before the Ethics Commission, the University's charge for providing responsive records appears to be reasonable. The University states it has spent \$114.56 to extract emails responsive to Mr. Mantell's second request and \$85.95 to extract emails responsive to Mr. Mantell's first/third request. Although the University estimated 3 hours of paralegal review for the second request, the University states it has spent 18 hours of paralegal time (at a rate of \$23.54/hour) to review all 1,133 emails responsive to all requests. If ACEJMC does not file for a protective order, or should such order be denied, the University may charge Mr. Mantell a fee not to exceed its actual cost, \$624.23, for providing responsive records.

### III. CONCLUSION

WHEREFORE, it is hereby ordered as follows:

3.1 The Ethics Commission finds the University of Mississippi violated Section 25-61-5 of the Mississippi Public Records Act by denying Mr. Mantell responsive records.

3.2 The Ethics Commission orders the University of Mississippi, 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 6th day of October 2023.

MISSISSIPPI ETHICS COMMISSION

BY: \_\_\_\_\_  
TOM HOOD, Executive Director