

BEFORE THE MISSISSIPPI ETHICS COMMISSION

DAN B. ADAMS

COMPLAINANT

VS.

PUBLIC RECORDS CASE NO. R-23-027

**HARRISON COUNTY SCHOOL
DISTRICT**

RESPONDENT

ORDER OF DISMISSAL

This matter came before the Mississippi Ethics Commission through a Public Records Complaint filed by Dan B. Adams against the Harrison County School District (the “school district”). The school district filed a response to the complaint by and through its attorneys. The Ethics Commission has jurisdiction over this matter pursuant to Section 25-61-13, Miss. Code of 1972. The hearing officer presented a Recommendation of Dismissal to the Ethics Commission at its regular meeting held on June 7, 2024, at which time the commission approved this Order of Dismissal in accordance with Rule 5.6, Rules of the Mississippi Ethics Commission.

I. FINDINGS OF FACT

1.1 Dan Adams alleges the Harrison County School District violated the Public Records Act by denying his request for public records. On July 24, 2023, Mr. Adams requested “the appraisal report and any other documents related to the consent agenda item VII.D.2. listed on the 7/10/2023 School Boards agenda. The appraisal was for the 16th Section land located at 3 Rivers and Creosote Road.” On July 27, 2023, the attorney for the school district sent Mr. Adams (and his employer’s attorney) a denial stating that the appraisal was exempt from the Public Records Act as (1) attorney work product (Miss. Code Section 25-1-102), (2) records of commercial or financial information and of a proprietary nature (Miss. Code Section 79-23-1(1)); and (3) appraisal information about the sale or purchase of real or personal property for public purposes before a public announcement of a transaction, when the release of the records would have a detrimental effect on a transaction (Miss. Code Section 31-1-27). In its response, the school district states that “the appraisal [was] obtained to use in litigation and in settlement negotiations....”

1.2 By way of background, prior to making this public records request, Mr. Adam’s employer, Lamar Company, LLC (“Lamar” a billboard and signage company) and the Harrison County School District have engaged in some litigation over various sixteenth section leases, including the land at Three Rivers and Creosote Roads. In 2016, Lamar filed a lawsuit against a competitor who erected a sign on a school district property. In 2019 during the course of this litigation, as an intervenor, the school district alleged that there were issues regarding (1) a Lamar sublease with the school district’s sixteenth section tenant, “RJD,” and (2) a Lamar sign on district sixteenth section land without a valid lease. In its court filings, Lamar states it undertook its own internal study and identified another possible issue with its sign located on the land at Three Rivers and Creosote Roads, for which the lessor of the sixteenth section land had lost its lease in February 2013. In August 2023, Lamar filed two lawsuits against the school district over these various leases and subleases.

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 In this case, the Harrison County School District relies on three exemptions: Section 25-1-102 – privileged attorney-work product; Section 79-23-1(1) – appraisal information about public property for a sale or purchase; and Section 31-1-27 – commercial and financial information of a proprietary nature required to be submitted to a public body.

2.3 Exemptions to the Mississippi Public Records Act must be specifically and narrowly construed. Harrison County Development Commission v. Kinney, 920 So.2d 497, 502 (Miss. App. 2006). As such, neither Section 79-23-1(1) nor Section 31-1-27 apply to the appraisal sought by Mr. Adams. Section 79-23-1(1) exempts “[c]ommercial and financial information of a proprietary nature required to be submitted to a public body...” Since the appraisal was requested by the school board and not a document that is required to be submitted to a public body, this exemption does not apply. Additionally, Section 31-1-27 exempts “[a]ppraisal information in the possession of a public body, ... which concerns the sale or purchase of real or personal property for public purposes prior to public announcement of the purchase or sale, where the release of such records would have a detrimental effect on such sale or purchase....” In this case, since the property is sixteenth section land and not available for purchase or sale, the plain language of the statute also does not apply.

2.4 However, the attorney-work product exemption does apply to exempt the appraisal. Section 25-1-102 states in pertinent part:

Records in the possession of a public body... which represent and constitute the work product of any attorney ... which are related to litigation made by or against such public body, or in anticipation of prospective litigation, including all communications between such attorney made in the course of an attorney-client relationship, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

2.5 In its response, the school district affirmatively states that the appraisal was “obtained to use in litigation and in settlement negotiations...” Since it was prepared in anticipation of litigation, it may be considered attorney work product and exempt from the Mississippi Public Records Act. See also, Miss. Att’y Gen. Op 2005-0291, Graham, (July 1, 2005) (Appraisals prepared in anticipation of litigation are attorney work product, even when then appraiser was hired by a county board and did not complete the appraisal.)

WHEREFORE, the complaint is hereby dismissed this the 7th day of June 2024.

MISSISSIPPI ETHICS COMMISSION

BY: _____
TOM HOOD, Executive Director and
Chief Counsel