

BEFORE THE MISSISSIPPI ETHICS COMMISSION

ROBERT WICKER PERLIS

COMPLAINANT

VS.

PUBLIC RECORDS CASE NO. R-22-044

CITY OF PEARL

RESPONDENT

ORDER OF DISMISSAL

This matter came before the Mississippi Ethics Commission through a Public Records Complaint filed by Robert Wicker Perlis against the City of Pearl, Mississippi (the “city”) The city clerk filed a response to the complaint. 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 September 8, 2023, 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 Robert Perlis, a reporter with The Clarion Ledger newspaper, alleges the City of Pearl violated the Public Records Act by denying his request for records. Specifically, on August 15, 2022, Mr. Perlis requested “any city or police department policies regarding car chases and crossing jurisdictional lines when in pursuit of suspects” and “any correspondence, written or digital, between members of the city council or mayor's office and the police department regarding those policies, between the dates of July 21 and the time of receiving this request.”

1.2 On August 23, the city responded in writing, denying his request, stating that the policies are exempt as “investigative reports” under the Public Records Act, and that there was no correspondence.

1.3 Mr. Perlis filed this complaint with the Ethics Commission, and in response the city reiterated its denial. Specifically, the city states:

The Policy requested is a written procedure to be followed by officers when performing their jobs and disclosure would endanger the life or safety of a public official or law enforcement personnel as well as the public more generally. Put simply, public disclosure of law enforcement response policies would allow criminals the opportunity to pre-plan criminal activity in a manner that seeks to avoid capture.

As to the second request for communication between the Mayor and Board, there is no communication between the Board and Mayor that exists to produce. Regardless of the serious doubts expressed, the City’s Information Technology Director performed a search for any such correspondence. ... However, there simply is nothing to produce.

1.4 Accordingly, the hearing officer requested that the city provide the Ethics Commission with a copy of its responsive policies for a confidential, private review as allowed by Section 25-61-13 of the Public Records Act.

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 Section 25-61-12(2)(a) of the Act exempts from production certain records held by a “law enforcement agency.” Section 25-61-12(2)(a) states:

When in the possession of a law enforcement agency, investigative reports shall be exempt from the provisions of this chapter; however, a law enforcement agency, in its discretion, may choose to make public all or any part of any investigative report.

2.3 A law enforcement agency includes any “public body that performs as one of its principal functions activities pertaining to the enforcement of criminal laws, the apprehension and investigation of criminal offenders, or the investigation of criminal activities.” Section 25-61-3(g). The City of Pearl’s police department is clearly a law enforcement agency. Section 25-61-3(f) defines “investigative report” as records of a law enforcement agency containing information beyond the scope of an incident report including, but not limited to, the following:

- (i) Records that are compiled in the process of detecting and investigating any unlawful activity or alleged unlawful activity, the disclosure of which would harm the investigation which may include crime scene reports and demonstrative evidence;
- (ii) Records that would reveal the identity of informants and/or witnesses;
- (iii) Records that would prematurely release information that would impede the public body's enforcement, investigative or detection efforts;
- (iv) Records that would disclose investigatory techniques and/or results of investigative techniques;
- (v) Records that would deprive a person of a right to a fair trial or an impartial adjudication;
- (vi) Records that would endanger the life or safety of a public official or law enforcement personnel, or confidential informants or witnesses;

- (vii) Records pertaining to quality control or PEER review activities; or
- (viii) Records that would impede or jeopardize a prosecutor's ability to prosecute the alleged offense.

2.4 The Mississippi Attorney General's Office has opined that "[d]ocuments or records relating to officer training and detailing how chemical agents are to be used during an arrest specifically may be considered to be "investigative reports" as are contemplated in Section 25-61-3(f)(iv) and (vi)." MS AG Op. No. 2010-00381, Sorrell (Sept. 8, 2010). Additionally, "written procedures to be followed by officers when escorting the Governor or other officials, may be records that would endanger the life or safety of a public official or law enforcement personnel and would, thus, be exempt under Section 25-61-3(f)." Id.

2.5 The city has stated that its policies regarding police chases and crossing jurisdictional lines are "investigative reports that would disclose investigative techniques, endanger the life or safety of law enforcement personnel, and records that would prematurely release information that would impede the public body's enforcement, investigation or detection efforts." Upon confidential review, the policies do disclose information that could endanger the life or safety of law enforcement personnel if disclosed, and/or reflect information that would prematurely release information that would impede the public body's enforcement, investigation or detection efforts. As such, the policies are investigative reports that are exempt from production under the Act. No violation of the Act occurred when the city denied Mr. Perlis' public records request.

2.6 Additionally, based on the record before the Ethics Commission, no evidence was presented that there are any email communications responsive to Mr. Perlis' request. The city "has no obligation under the statute to provide documents that do not exist or to create documents to satisfy a public records request." Scruggs v. Caldwell, 970 So. 2d 1298, 1299 (Miss. App. 2007). The city has complied with its obligations under the Public Records Act, and this case should be dismissed.

WHEREFORE, the complaint is hereby dismissed this the 8th day of September 2023.

MISSISSIPPI ETHICS COMMISSION

BY: _____
TOM HOOD, Executive Director and
Chief Counsel