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PUBLIC RECORDS OPINION NO. R-08-001

March 6, 2009

The Mississippi Ethics Commission issued this opinion on the date shown above in accordance with Section 25-61-13(1)(b), Mississippi Code of 1972, as reflected upon its minutes of even date.

I. FACTS/PROCEDURAL HISTORY

1.1 Mr. Michael D. Harbart filed this public records opinion request with the Commission on August 15, 2008. Harbart is seeking a copy of a police officer's statement made during an internal affairs investigation conducted by the City of Hattiesburg Police Department. The investigation occurred after Mr. Harbart filed a complaint against the officer. Mr. Harbart states a representative of the police department notified him by telephone that the statement he requested is a personnel record exempt from public records disclosure.

1.2 The city filed its response on September 11, 2008. According to the response, Mr. Harbart's complaint led to an internal affairs investigation, and Mr. Harbart was notified by letter from the chief of police that the investigation did not substantiate his allegations. As provided in the written notice, Mr. Harbart chose to have his complaint reviewed by the city's chief administrative officer. Subsequently, Mr. Harbart made a public records request for the officer's statement. The city states the information obtained during an internal affairs investigation is placed in the police officer's personnel file, and Mr. Harbart's public records request was denied by the city pursuant to Section 25-1-100, Miss. Code of 1972, which exempts personnel records from disclosure under the Public Records Act.

II. ANALYSIS

2.1 The issue in this matter is whether a statement contained in an internal affairs investigative file of a police department is subject to disclosure under the Mississippi Public Records Act of 1983 (the "Act"), codified at Section 25-61-1, et seq., Miss. Code of 1972. The Act 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, 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 statement in question is clearly a public record. However, the city argues any statements obtained during the investigation are exempt from disclosure as "personnel records" under Section 25-1-100, Miss. Code of 1972. That statute mandates "personnel records and applications for employment in the possession of a public body ... shall be exempt from the provisions of the [Public Records Act]." However, the term "personnel records" is not defined in that statute or within the Public Records Act. Furthermore, the Commission's research revealed no statute dictating what information is to be contained in the personnel files of municipal employees. Certain information contained in personnel files, such as gross salary and accrued leave time, is subject to disclosure. Harrison County Development Commission v. Kinney, 920 So.2d 497, 502 (Miss. App. 2006), citing Mississippi Dep't of Wildlife, Fisheries and Parks v. Mississippi Wildlife Enforcement Officers' Assn., Inc., 740 So.2d 925, 936 (¶ 32) (Miss.1999). Therefore, the determination here is not solely dependent upon whether the city places the documents in a personnel file. Rather, the determination is based upon the nature of the documents.

2.3 The statement of the police officer and any other statements obtained during the investigation were created during the city's investigation of a personnel matter. The city used these documents to determine whether to take disciplinary action against an employee. The statements and any other documents created during the investigation and solely for the investigation are personnel records and are not subject to disclosure. Therefore, the city was justified in denying Mr. Harbart's request for public records, and the statements in issue need not be produced by the city.

2.4 However, this opinion is strictly limited to the statements and other documents created during the internal investigation. The written notice which was sent to Mr. Harbart by the chief of police informing him the internal investigation had been concluded is clearly a public record subject to disclosure even if it is contained in the personnel file. The outcome of this opinion would be different if, for example, the city added any documents to the personnel file which were clearly not exempt from disclosure, or which were clearly not needed for the investigation. Such documents are not personnel records and would be subject to disclosure, even if they are placed in the personnel file of an employee.

MISSISSIPPI ETHICS COMMISSION

BY: _____
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