

**BEFORE THE MISSISSIPPI ETHICS COMMISSION**

**PHILIP W. THOMAS**

**COMPLAINANT**

**VS.**

**NO. R-15-021**

**RANKIN COUNTY BOARD OF SUPERVISORS**

**RESPONDENT**

**FINAL ORDER**

This matter came before the Mississippi Ethics Commission through a Public Records Complaint filed by Philip W. Thomas against the Rankin County Board of Supervisors. 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. 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 On February 26, 2015, Philip W. Thomas submitted a request to the Rankin County Board of Supervisors (the “county”) for nine (9) categories of documents related to the construction and repairs of the bridge and guardrails adjacent to the bridge over Neely Creek located at 4008 Mangum Drive in Flowood, Mississippi. On March 6, he resubmitted his request to the county at the county attorney’s request, on the county’s official public records request form. Specifically, Mr. Thomas sought:

1. records showing the construction dates and contractors for the bridge and guardrails;
2. all work orders related to the guardrails;
3. all contractor invoices related to the guardrails;
4. all repair records related to the guardrails;
5. all photographs related to the guardrails;
6. all manufacturer’s shop drawings and installation instructions related to the guardrails;
7. any other documents related to the installation, repair or maintenance of the guardrails;
8. records related to any automobile accidents involving the guardrails; and
9. any other documents in the county’s possession related to the guardrails.

1.2 On March 17, 2015, the county attorney, Mr. Craig Slay, advised that pursuant to the mandated record retention policy directed by the Mississippi Department of Archives and History, “records of road/bridge construction, replacement maintenance and/or repair are to be retained by counties for a period of three years.” The county attorney further advised that

“Rankin County maintains no record of any replacement, maintenance or repair of the subject bridge or guardrail during the prior three year period.”

1.3 On March 30, 2015, Mr. Thomas subsequently attempted to clarify his request to limit the documents he was seeking to specifically the Rankin County Road Docket.

1.4 On April 27, 2015 Mr. Thomas initiated a new public records request seeking any documents related to repairs performed in April 2015 of the guardrails. In response, on April 30, 2015, the county advised that “a response will be provided” regarding any repairs performed in April 2015.

1.5 On May 15, 2015, in response to Mr. Thomas’ request for the Road Docket, the county attorney directed Mr. Thomas to review its Rankin County Board of Supervisors meeting minutes, to which is attached “a schedule of road work scheduled and road work accomplished as prepared by the Rankin County Road Manager.” The county attorney further indicated that “[i]nformation response to your request, if any, will be reflected on the schedules. [And, that] the schedules are maintained with the permanent copy of the Minutes of the Rankin County Board of Supervisors in the Office of the Clerk of the Board (the Chancery Clerk).”

1.6 On June 3, 2015, Mr. Thomas notified the county that he had reviewed the board’s minutes but that it did not contain the Rankin County Road Docket he was seeking. He indicated that we was able to verify that the County’s road department does have the Road Docket, and sought access to the same.

1.7 On June 10, the county attorney simply referenced its reply to Mr. Thomas dated May 15, 2015, directing Mr. Thomas to the board’s minutes, and notified him that “[t]his will be our last response concerning this matter.” The county also failed to provide any documents to Mr. Thomas regarding repairs to the bridge guardrails performed in April 2015.

1.8 On June 15, 2015, Mr. Thomas filed a formal public records complaint with the Ethics Commission, alleging that Rankin County has essentially refused to produce the Road Docket for his review and any records related to repairs performed on April 23, 2015 to the bridge guardrail located at 4008 Mangum Road. Mr. Thomas understands that the Road Docket is maintained by the county’s road department. Furthermore, Mr. Thomas has provided the Ethics Commission with an affidavit from a witness who identified a crew from Atwood Fence Company repairing a missing guardrail on the subject bridge located at 4008 Mangum Drive on April 23, 2015.

1.9 The county responded to Mr. Thomas’ public records complaint by and through its attorney, Mr. Craig Slay. In its response, the county did not address why the Rankin County Road Docket was not produced for Mr. Thomas to review, but reiterated that Mr. Thomas was directed to review the board’s monthly minutes, to which monthly accounting of repairs accomplished and scheduled are appended as an exhibit. With regard to Mr. Thomas’ request for documents regarding repairs performed on April 23, 2015, the county stated that “[n]either Rankin County nor any entity under contract with Rankin County performed repairs or

maintenance to the bridge or guardrail at issue during the period of three years preceding the date of the Complainant's request."

1.10 On September 17, 2015, the undersigned hearing officer issued a subpoena duces tecum on the Rankin County Road Manager to produce and deliver the following documents to the Ethics Commission for in camera review:

1. The Road/Street Docket or any permanent record maintained by the Rankin County Road Department of all road maintenance performed, including the historical summary of maintenance from initial construction to the present regarding the bridge and guardrails located at 4008 Mangum Drive in Flowood, Mississippi;
2. Work Orders for any road maintenance performed or any record of repair to the bridge and guardrails located at 4008 Mangum Drive in Flowood, Mississippi; and
3. Any monthly reports from the Rankin County Road Department to the Rankin County Board of Supervisors regarding any construction, maintenance, or repair to the bridge and guardrails located at 4008 Mangum Drive in Flowood, Mississippi.

1.11 On September 25, 2015, the county attorney responded to the subpoena with two sets of documents. The first set of documents the "Group A" documents, were derived solely from the Official Minutes of the Rankin County Board of Supervisors, as maintained by the Rankin County Chancery Clerk. In the cover letter, the county attorney stated that all of these records "are, and have always been, available for inspection and photocopying by any third party during normal office hours of the Rankin County Chancery Clerk, being 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding recognized holidays."

1.12 The second set of documents, the "Group B" documents, were obtained from Engineering Service, a firm of consulting engineers and surveyors located in Richland, Mississippi. In the cover letter, the county attorney states that these documents "WERE NOT, AND NEVER HAVE BEEN IN THE POSSESSION OF RANKIN COUNTY." (emphasis in original). These documents include the following:

1. A cover letter dated August 18, 2010 from Engineering Service to the Rankin County Board of Supervisors, enclosing copies of six bids addressed to the Rankin County Board of Supervisors for the "Mangum Drive Bridge Slope Repair" and related correspondence;
2. The contract document, specifications and related correspondence between the Rankin County Board of Supervisors (as signed by Wood Brown, President of the Rankin County Board of Supervisors and attested by Larry Swales, Rankin County Chancery Clerk) and Thornton Construction Company, Inc. for the Mangum Drive Slope Repair. The contract was dated September 7, 2010;

4. Plan and profile of proposed county highway federal aid bridge replacement project No. BR-0061(16)BO regarding Mangum Drive in Rankin County; and
5. Undated and unsigned “List of Overruns and Underruns” for Project No. BF 0061(16)BO.

## 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, 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).

2.2 A record may be “used” by a public body even if the public body does not physically possess the record. Miss. Model Public Records Rules, Rule 3, Comment 3.1(3) (2010). The example provided in the Model Rules is as follows:

For example, if a public body considered technical specifications of a public works project and returned the specifications to the contractor in another state, the specifications would be “public record” because the public body “used” the document in its decision-making process. The public body could be required to obtain the public record, unless doing so would be impossible. A public body should not send its only copy of a record to a third party for the sole purpose of avoiding disclosure.

Id. As such, a public body is required to provide access to public records over which it has control, even if it does not have physical possession of the documents. See, Model Rule 4, Comment 4.4(4)(a).

2.3 However, a public body is not required to retain every record it ever created or used. Model Rule 3, Comment 3.5. The Local Government Records Office of the Mississippi Department of Archives and History (MDAH) has issued general records retention schedules for counties. Section 39-5-9. The retention period listed in the general schedules for each records series is the minimum time necessary to retain records. The unlawful destruction of public records can be a crime. Section 25-59-23.

2.4 The record retention schedules for counties require contracts executed by a county and bid documents to be retained for a minimum of five years.<sup>1</sup> As such, although not in the

---

<sup>1</sup> GSC 06 04: Contracts executed between a board of supervisors (or any county entity) and a business(es) or individual(s), and which have been recorded verbatim in the minutes must be retained for five (5) years following expiration of the contract.

GSC 04 01: Successful and unsuccessful bids received for purchases of goods or services . . . must be retained for five (5) years, or three (3) years after release of audit, whichever is later. Associated documentation may include

physical possession of Rankin County, the “Group B” documents were public records required to be retained by the county pursuant to the MDAH county retention schedules, at the time of the initial request, and produced pursuant to the public records request.

### III. CONCLUSION

1. The Ethics Commission finds the Rankin County Board of Supervisors violated Section 25-61-5, Miss. Code of 1972, by failing to produce requested public records.

2. The Ethics Commission orders the Rankin County Board of Supervisors provide to the requestor a copy of all of the Group A and Group B documents it submitted to the Ethics Commission pursuant to the subpoena for in camera review.

SO ORDERED this the 25<sup>th</sup> day of February 2016.

---

SONIA SHURDEN, Hearing Officer  
Mississippi Ethics Commission