

BEFORE THE MISSISSIPPI ETHICS COMMISSION

DONALD BREWER

COMPLAINANT

VS.

PUBLIC RECORDS CASE NO. R-19-020

MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY

RESPONDENT

ORDER OF DISMISSAL

This matter came before the Mississippi Ethics Commission through a Public Records Complaint filed by Donald Brewer against the Department of Public Safety for the State of Mississippi (DPS). DPS filed a response to the complaint by and through its attorney. 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 August 2, 2019, in accordance with Rule 5.6, Rules of the Mississippi Ethics Commission. This Order of Dismissal is entered in accordance with Rule 5.6.

I. FINDINGS OF FACT

1.1 On January 15, 2019 Donald Brewer sought a complete copy of the Mississippi Department of Public Safety's General Orders for the Mississippi Highway Patrol. After some mutual communications regarding the scope and cost of the request between the requestor and public body, on March 13, 2019, Mr. Brewer narrowed his request to nine specific General Orders. Upon payment and receipt, these nine orders were provided, except two of the General Orders (General Order 11.01 Vehicle Pursuit and General Order 11.07 DUI Enforcement Procedures) were partially redacted. DPS notified Mr. Brewer that portions of the General Orders were exempt under Section 25-61-12(2)(a) as "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."

1.2 Mr. Brewer filed this complaint alleging that the redactions were improper and a violation of the Mississippi Public Records Act. In response, DPS argues that the redactions were properly redacted. Accordingly, the hearing officer requested that DPS provide the Ethics Commission with an unredacted copy of both General Orders 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). DPS 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.* The Ethics Commission has

previously opined that to the extent “a law enforcement agency’s policies and procedures contain some information the agency can protect from disclosure as an investigative report but other information which is not protected, Section 25-61-5(2) requires the law enforcement agency to redact the protected information and produce redacted copies of the policies and procedures.” Tom v. Madison County Sheriff’s Department, Public Records Case No. R-17-001. See also, Public Records Case Nos. R-12-003; R-10-008; and R-08-002. However, when a public record contains exempt material but the entire record is not exempt, the public body must “redact the exempted and make the non-exempted material available for examination.” Section 25-61-5(2).

2.5 DPS stated that portions of General Order 11.01 “Vehicle Pursuit” and General Order 11.07 “DUI Enforcement Procedures” were redacted as “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 hearing officer found the redacted portions do disclose investigative techniques, 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 executed redacted portions are investigative reports that are exempt from production under the Act. No violation of the Act occurred when DPS redacted these portions of the orders in response to Mr. Brewer’s public records request.

WHEREFORE, the complaint is hereby dismissed this the 2nd day of August, 2019.

MISSISSIPPI ETHICS COMMISSION

BY: _____

TOM HOOD, Executive Director