

BEFORE THE MISSISSIPPI ETHICS COMMISSION

MITCHEL MARSHALL

COMPLAINANT

VS.

PUBLIC RECORDS CASE NO. R-19-025

LAUDERDALE COUNTY, MISSISSIPPI

RESPONDENT

ORDER OF DISMISSAL

This matter came before the Mississippi Ethics Commission through five Public Records Complaints filed by Mitchel Marshall against Lauderdale County, Mississippi (the “county”). 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 February 7, 2020, 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 Mitchell Marshall filed five separate public records complaint forms alleging that Lauderdale County violated the Public Records Act by refusing to deliver public records in electronic form for various public records requests. These complaints were consolidated since the allegations contained on each complaint were identical. However, each complaint refers to different public records requests, detailed as follows:

1.2

R-19-025-1: A public records request form submitted by Mr. Marshall on May 31, 2019 for emails, letters and other documents with a statement that “ALL RECORDS ARE REQUESTED TO BE DELIVERED IN ELECTRONIC (PDF) FORMAT”; emails between him and Chris Lafferty, the County Administrator; an invoice for a total of \$6.91 for .33 hours of searching for documents by Christen Shepard; and a letter dated June 7, 2019 stating that no public records were found that were responsive to his request.

R-19-025-2: A public records request form submitted by Mr. Marshall on May 17, 2019 for various email communications with a statement that “ALL RECORDS ARE REQUESTED TO BE DELIVERED IN ELECTRONIC (PDF) FORMAT”; emails between him and Mr. Lafferty; and an invoice for a total of \$5.35 for .08 hours of searching for documents by Mr. Lafferty and 4 pages at \$0.15 per page.

R-19-025-3: A public records request form submitted by Mr. Marshall on June 3, 2019 for a specific email with a statement that “ALL RECORDS ARE REQUESTED TO BE DELIVERED IN ELECTRONIC (PDF) FORMAT”; emails between him and Mr. Lafferty; an invoice for a total of \$6.91 for .33 hours of searching for documents by Ms. Shepard; and a letter dated June 7, 2019 stating that no public records were found that were responsive to his request.

R-19-025-4: Emails between Mr. Marshall and Mr. Lafferty; an invoice for a total of \$24.46 for .50 hours of searching for documents by Ms. Shepard and .25 hours of searching by Mr. Lafferty and 21 pages at \$0.15 per page; and a picture of the first page of the documents Mr. Lafferty was provided. (Mr. Marshall failed to provide a copy of his public records request.)

R-19-025-5: Emails between Mr. Marshall and Mr. Lafferty; an invoice for a total of \$49.86 for .83 hours of searching for documents by Ms. Shepard, .17 hours by Chris Omelas, and .25 hours by Mr. Lafferty, 84 pages at \$0.15 per page and 1 DVD for \$0.27; and a picture of a DVD and the first page of the documents Mr. Lafferty was provided. (Mr. Marshall failed to provide a copy of his public records request.)

1.3 Specifically, in each complaint, he states:

My real complaint here is that Lauderdale County, best I can tell, refuses to deliver public records in an electronic format. In one instance in the past they did deliver me a public record in pdf format, so this by no means is an unrealistic request.

. . . in the event that this public records complaint gets their attention and they do provide electronic format as requested . . . I would also ask that they . . . discount their costs for county public records, and provide a partial refund of the costs, since there is no paper and printer ink being used.

1.4 Additionally, Mr. Marshall suggests that Lauderdale County provide a reference number on the various receipts and letters, to limit confusion, since “there are instances where I have done multiple requests within the same 24 hours.”

1.5 In response, Lauderdale county denies it violated the Public Records Act in responding to Mr. Marshall’s public records requests. However, Lauderdale County states the Board of Supervisors will consider changing its Public Records Policy to assign public records requests a unique reference number, and bates stamp each page produced to assist in tracking of documents. The county also states that it is willing to scan bates stamped paper documents responsive to Mr. Marshall’s public records requests and provide them to Mr. Marshall on a DVD or CD.

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. See Section 25-61-2, Miss. Code of 1972. Further, “a public body shall provide a copy of the record in the format requested if the public body maintains the record in that format, and the public body may charge a fee which must be in accordance with Section 25-61-7.” Section 25-61-10(2).

2.2 With regard to Mr. Marshall's complaints R-19-025-1 and R-19-025-3, the county provided a letter stating that no documents were found that were responsive to his request. As a result, with regard to these complaints, no violation of the Public Records Act has occurred.

2.3 With regard to Mr. Marshall's complaints R-19-025-4 and R-19-025-5, Mr. Marshall failed to provide a copy of the public records requests. In the record before the commission, it cannot be determined whether the documents requested were maintained by Lauderdale County in PDF electronic form. As a result, there is insufficient evidence to show that Lauderdale County violated the Public Records Act, by failing to provide responsive documents in electronic form as requested.

2.4 Finally, with regard to complaint R-19-025-2, Mr. Marshall requested various emails, to be delivered in "electronic (PDF) format." While email communications are clearly documents that would be initially maintained by the county in electronic form, they are not likely maintained in PDF form by the county. The commission's model rules recommend that a public body determine whether the public records are "reasonably translatable" – that is, whether they have the ability to take an electronic record in one format and change it into another electronic format – and then take reasonable steps to do so. See, Comment 5.2(2), Mississippi Model Public Records Rules. However, the Act specifically only requires a public body to "provide a copy of the record in the format requested if the public body maintains the record in that format." Section 25-61-10-(2). Since the emails requested would be maintained in an electronic format different to the electronic format requested, the county's failure to provide Mr. Marshall with PDF copies of the emails is not a violation of the Public Records Act.

WHEREFORE, the complaint is hereby dismissed this the 7th day of February, 2020.

MISSISSIPPI ETHICS COMMISSION

BY: _____

TOM HOOD, Executive Director