

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

MISSISSIPPI

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE
OPEN RECORDS AND MEETINGS LAWS IN
MISSISSIPPI

Prepared by:
Luther T. Munford
R. Gregg Mayer
Phelps Dunbar, L.L.P.
4270 I-55 North
Jackson, MS 39211
601-352-2300



Sixth Edition
2011

OPEN GOVERNMENT GUIDE

Access to Public Records and Meetings in

MISSISSIPPI

SIXTH EDITION
2011

Previously Titled
Tapping Officials' Secrets

Published by The Reporters Committee for Freedom of the Press
Lucy A. Dalglish, Executive Director

EDITORS

Gregg Leslie, Legal Defense Director
Mark Caramanica, Freedom of Information Director

ASSISTANT EDITORS

Christine Beckett, Jack Nelson Legal Fellow
Aaron Mackey
Emily Peterson

Production of the sixth edition of this compendium was possible
due to the generous financial contributions of:
The Stanton Foundation

© 2011, 2006, 2001, 1997, 1993, 1989 by The Reporters Committee for Freedom of the Press.
All rights reserved. No part of this publication may be reproduced in any form or
by any means without the prior, written permission of the publisher.

ISBN: 1-58078-226-4

Contents

Introductory Note	iv	V. PROCEDURE FOR OBTAINING RECORDS	8
User’s Guide	v	A. How to start.....	8
FOREWORD	1	B. How long to wait.....	8
Open Records.....	2	C. Administrative appeal.....	8
I. STATUTE -- BASIC APPLICATION.....	2	D. Court action.....	8
A. Who can request records?	2	E. Appealing initial court decisions.....	9
B. Whose records are and are not subject to the act?	2	F. Addressing government suits against disclosure.....	9
C. What records are and are not subject to the act?	2	Open Meetings.....	10
D. Fee provisions or practices.....	2	I. STATUTE -- BASIC APPLICATION.....	10
E. Who enforces the act?	3	A. Who may attend?	10
F. Are there sanctions for noncompliance?	3	B. What governments are subject to the law?	10
II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS	3	C. What bodies are covered by the law?	10
A. Exemptions in the open records statute.....	3	D. What constitutes a meeting subject to the law.....	10
B. Other statutory exclusions.....	5	E. Categories of meetings subject to the law.....	11
C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.....	5	F. Recording/broadcast of meetings.....	13
D. Are segregable portions of records containing exempt material available?.....	5	G. Are there sanctions for noncompliance?	13
E. Homeland Security Measures.....	5	II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS	13
III. STATE LAW ON ELECTRONIC RECORDS.....	5	A. Exemptions in the open meetings statute.....	13
A. Can the requester choose a format for receiving records?	5	B. Any other statutory requirements for closed or open meetings.....	14
B. Can the requester obtain a customized search of computer databases to fit particular needs?	5	C. Court mandated opening, closing.....	14
C. Does the existence of information in electronic format affect its openness?	5	III. MEETING CATEGORIES -- OPEN OR CLOSED.....	14
D. How is e-mail treated?	5	A. Adjudications by administrative bodies.....	14
E. How are text messages and instant messages treated?	5	B. Budget sessions.....	14
F. How are social media postings and messages treated?	6	C. Business and industry relations.....	14
G. How are online discussion board posts treated?	6	D. Federal programs.....	14
H. Computer software.....	6	E. Financial data of public bodies.....	14
I. How are fees for electronic records assessed?	6	F. Financial data, trade secrets or proprietary data of private corporations and individuals.....	14
J. Money-making schemes.....	6	G. Gifts, trusts and honorary degrees.....	14
IV. RECORD CATEGORIES -- OPEN OR CLOSED.....	6	H. Grand jury testimony by public employees.....	14
A. Autopsy reports.....	6	I. Licensing examinations.....	14
B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)	6	J. Litigation; pending litigation or other attorney-client privileges.....	14
C. Bank records.....	6	K. Negotiations and collective bargaining of public employees.....	14
D. Budgets.....	6	L. Parole board meetings, or meetings involving parole board decisions.....	14
E. Business records, financial data, trade secrets.....	6	M. Patients; discussions on individual patients.....	14
F. Contracts, proposals and bids.....	6	N. Personnel matters.....	14
G. Collective bargaining records.....	6	O. Real estate negotiations.....	14
H. Coroners reports.....	6	P. Security, national and/or state, of buildings, personnel or other.....	14
I. Economic development records.....	6	Q. Students; discussions on individual students.....	14
J. Election records.....	6	IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS	15
K. Gun permits.....	6	A. When to challenge.....	15
L. Hospital reports.....	6	B. How to start.....	15
M. Personnel records.....	6	C. Court review of administrative decision.....	15
N. Police records.....	7	D. Appealing initial court decisions.....	16
O. Prison, parole and probation reports.....	7	V. ASSERTING A RIGHT TO COMMENT.....	16
P. Public utility records.....	7	A. Is there a right to participate in public meetings?	16
Q. Real estate appraisals, negotiations.....	7	B. Must a commenter give notice of intentions to comment?	16
R. School and university records.....	7	C. Can a public body limit comment?	16
S. Vital statistics.....	7	D. How can a participant assert rights to comment?	16
		E. Are there sanctions for unapproved comment?	16
		Statute.....	16

Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

Prepared by:

Luther T. Munford
 R. Gregg Mayer
 Phelps Dunbar, L.L.P.
 4270 I-55 North
 Jackson, MS 39211
 601-352-2300

FOREWORD*Open Records.*

Mississippi as early as 1941 recognized a right to inspect and copy public records such as land title records. The requester was not required to show a special interest in the records. *Logan v. Mississippi Abstract Co.*, 190 Miss. 479, 200 So. 716 (1941) (interpreting what is now Miss. Code Ann. § 9-5-169). See also *W. T. Rawleigh Co. v. Hester*, 190 Miss. 329, 200 So. 250, 254 (Miss. 1941) (right to inspect public records in sheriff's office); *Pollard v. State*, 205 So. 2d 286, 288 (Miss. 1967) (records of circuit and chancery clerks are public documents); *In re Coleman*, 208 F. Supp. 199, 201 (S.D. Miss. 1962), *affid.* 313 F.2d 867 (5th Cir. 1963) (“the right of free examination of official records is the rule”).

It was not until 1983, however, that Mississippi adopted a generally applicable public records statute, now codified as § 25-61-1 *et seq.* There is no official legislative history, other than the record of votes and proposed amendments in the legislative journals. In the first decision by the Mississippi Supreme Court construing the Act, the court relied in part on the title of the bill in the session laws. Quoting from the title, the court held that the Act covered “records of all public bodies of government,” even driver’s license name lists formerly sold at a profit by the state. *Roberts v. Miss. Republican Party State Executive Comm.*, 465 So. 2d 1050 (Miss. 1985). The Mississippi statute is not modeled on the records act of any other state.

Because the Act has not received very much judicial attention, the primary guides to its interpretation are the opinions of the state attorney general. These opinions are not formally published but are available on Westlaw. Also, the Act authorizes agencies affected to promulgate “reasonable written procedures concerning the cost, time, place and method of access” to records, § 25-61-5(1). Any doubt about the disclosure of the requested information should be resolved in favor of disclosure. *Harrison County Development Comm’n v. Kinney*, 920 So. 2d 497 (Miss. 2006).

Since passage of the 1983 Act, the legislature has steadily eroded its coverage by the adoption of exemptions. These include exemptions for medical examiner reports, § 41-61-63, and for case files of the Workers’ Compensation Commission, § 71-3-66. In general, the press has failed to monitor the legislative process closely enough to mount any effective opposition to these exemptions. The legislature has scattered exemptions throughout the code. They are not codified with the Act, which has made them less visible.

In 1996, Mississippi joined those states which have updated their public records laws for the electronic age. The law gives members of the public the right to request electronic records in electronic formats.

The law also forbids public agencies from contracting for information services unless the public also can access information provided by those services. However, the law does add exemptions to the Public Records Act for various forms of proprietary software. See § 25-61-1, -2, -10.

Open Meetings.

Mississippi first adopted an open meetings law in 1975. As originally enacted, the law permitted closed meetings for any reason so long as certain procedures were followed. In 1981, the legislature strengthened the law by limiting executive sessions to matters falling within one of 11 statutory exemptions. 1981 Miss. Laws, ch. 456. In 1990, the legislature changed the definition of “personnel matter” and added new notice requirements. 1990 Miss. Laws, ch. 541. The exemptions are in some respects similar to exemptions adopted previously in Louisiana. Compare Miss. Code Ann. § 25-41-7(4) to La. Rev. Stat. 42:6.1 (West Supp. 1990). There is no official legislative history of either the 1975, 1981, or 1990 bills. All that is available is the record of votes and proposed amendments in the session laws.

The Act contains a strong statement of policy which has guided the courts in interpreting the Act:

It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy, it is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein.

The Mississippi Supreme Court has said, “However inconvenient openness may be to some, it is the legislatively decreed public policy of this state.” *Mayor and Aldermen v. Vicksburg Printing & Publishing Co.*, 434 So. 2d 1333, 1336 (Miss. 1983), followed in *Board of Trustees v. Miss. Publishers Corp.*, 478 So. 2d 269 (Miss. 1985).

The Act sweeps broadly. A meeting is an “assemblage of members of a public body at which official acts may be taken,” § 25-41-3(b) (Supp. 2000). “Official acts” includes deliberations, and is not limited to voting. *Board of Trustees v. Mississippi Publishers Corporation*, 478 So. 2d 269, 278 (Miss. 1985). Problem areas are the “personnel” exemption, § 25-41-7(4) (a), and the failure of the Act to provide attorney fees to successful plaintiffs. Also, violation of the Act is not grounds for setting aside actions taken during a closed meeting. *Shipman v. North Panola Consolidated School District*, 641 So. 2d 1106 (Miss. 1994). See also *Citizens for Equal Property Rights v. Board of Supervisors of Lowndes Co.*, 730 So. 2d 1141, 1144 (Miss.)

Any rules or regulations of public bodies governing public access should be no more restrictive than the access afforded by the state public records and open meetings laws. *State Oil & Gas Bd. v. McGowan*, 542 So. 2d 244 (Miss. 1989).

Open Records

I. STATUTE -- BASIC APPLICATION

A. Who can request records?

See I.A.1, *infra*.

1. Status of requestor.

"Any person" may request records under the Act. § 25-61-5; Op. Att'y Gen. Aug. 1, 1984 to Earline Dugan.

2. Purpose of request.

The requester's purpose does not affect the requester's right to receive records, except with respect to certain exemptions. *See e.g.* § 41-57-2 (Department of Health, Bureau of Vital Statistics records limited to those with a "legitimate and tangible interest"); §25-61-7(a) (purpose taken into account in setting fee for "electronically accessible data").

3. Use of records.

The Act does not restrict the requester's use of the information provided.

B. Whose records are and are not subject to the act?

1. Executive branch.

"Public bodies" are covered and these include departments, boards, agencies and "any other entity of the state or a political subdivision thereof and any municipal corporation and any other entity created by" state law. §25-61-3(a).

a. Records of the executives themselves.

Records of a "public body" are covered. This does not include appointed or elected public officials or their employees. *See* Att'y Gen. May 15, 1984 to Griffith construing § 25-61-3(a).

b. Records of certain but not all functions.

The function of the executive officer is not relevant, except insofar as it is covered by a particular exemption, such as attorney work product, § 25-1-102, or personnel, § 25-1-100.

2. Legislative bodies.

Legislative records are covered by the Act, but an ambiguous section retains for the legislature "the right to determine the rules of its own proceedings and to regulate public access to its records." § 25-61-17.

3. Courts.

Courts are covered, but statutes exempt records developed among judges and among judges and their aides, § 9-1-38, and among juries concerning judicial decisions, § 13-5-97.

4. Nongovernmental bodies.

a. Bodies receiving public funds or benefits.

These are not covered. Coverage is restricted to an "entity created by the Constitution, or by law, executive order, ordinance or resolution." § 25-61-3(a). Private non-profit corporations and limited liability corporations do not meet the definition of "public body" under the act. Att'y Gen. No. 99-674, February 4, 2000 to Williamson. Political parties also do not meet that definition. Att'y Gen. No. 99-95, March 12, 1999 to Gardner. Other organizations that do not meet the definition are planning and development districts, Att'y Gen. No. 2004-103, March 9, 2004 to Tutor, and the Mississippi Surplus Lines Association, Att'y Gen. No. 2004-300, July 16, 2004 to Dale

b. Bodies whose members include governmental officials.

These are not covered, *see* § 25-61-3(a). Records officials use in the

performance of business for a public body are, however, covered. § 25-61-3(b).

5. Multi-state or regional bodies.

These would be covered if "created by the Constitution or by law, executive order, ordinance or resolution." § 25-61-3(a). Regional libraries are covered. Att'y Gen. No. 2002-479, Sept. 20, 2002 to McGough.

6. Advisory boards and commissions, quasi-governmental entities.

These are covered if "created by the Constitution or by law, executive order, ordinance or resolution." § 25-61-3(a).

7. Others.

A fire protection district is covered. Att'y Gen. No. 2004-91, March 5, 2004 to Schwartz. Sewer district is covered. Att'y Gen. No. 2004-170, April 16, 2004 to Cobb.

C. What records are and are not subject to the act?

1. What kind of records are covered?

Records are covered if they are used, or have been used or are "prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body" or are "required to be maintained by any public body." § 25-61-3(b).

2. What physical form of records are covered?

Records are covered "regardless of physical form or characteristics." § 25-61-3(b). Computerized voter registration lists and applications for registration are "records." Att'y Gen. Jan. 16, 1990 to Molpus. The 1996 legislation, codified as § 25-61-10(a), gives requesters the right to choose the format in which they want the records provided the body maintains the record in that format, and so overrules. Att'y Gen. April 17, 1991 to Lee. The requester's rights are qualified only by the agency's right to charge a reasonable fee.

3. Are certain records available for inspection but not copying?

The requester has a right not only to "inspect," but also to "copy or mechanically reproduce or obtain a reproduction of any public record of a public body." § 25-61-5(1).

D. Fee provisions or practices.

1. Levels or limitations on fees.

Fees must be "reasonably calculated to reimburse [the public body] for, and in no case to exceed, the actual cost of searching, reviewing and/or duplicating and, if applicable, mailing." § 25-61-7(1). An agency may not charge more than "actual cost," *Roberts v. Miss. Republican Party State Executive Comm.*, 465 So. 2d 1050, 1054 (Miss. 1985). This was held to apply even when a city conducted expensive aerial photography and mapping of local areas. *See* Att'y Gen. Oct. 5, 1994 to Gex. There is no statutory authority for chancery clerks to charge a flat monthly fee to abstractors for use of their office fax machine to transmit records to members of the public. Att'y Gen. No. 2002-344, Sept. 13, 2002 to Crook. Where the statute authorizes a court clerk to charge a fee, the fee does not count against the cap on the clerk's compensation. Att'y Gen. No. 96-003, Feb. 7, 1996 to Carpenter.

2. Particular fee specifications or provisions.

a. Search.

There are no particular fee specifications in the statute. Each agency may, however have "reasonable written procedures" concerning its charges. § 25-61-5(1). The Workers' Compensation Commission

could charge \$75 per hour to construct and test a search program. Att’y Gen. No. 2000-285, June 16, 2000 to Clark.

b. Duplication.

There are no particular fee specifications in the statute. Each agency may, however have “reasonable written procedures” concerning its charges. § 25-61-5 (1).

c. Other.

Fees can be established on a standard scale to reimburse costs of “creating, acquiring and maintaining” a geographic information system or multipurpose cadastre or other electronically accessible data, and such fees must be reasonably related to cost, but “in determining the fees or charges . . . the public body may consider the type of information requested, the purpose or purposes for which the information has been requested and the commercial value of the information.” § 25-61-7(2).

3. Provisions for fee waivers.

There is no statutory provision for fee waivers. The statute says the public body “may” collect fees, implying discretion. § 25-61-7.

4. Requirements or prohibitions regarding advance payment.

The statute says fees “shall be collected by the public body in advance of complying with the request.” § 25-61-7.

5. Have agencies imposed prohibitive fees to discourage requesters?

Several types of records are now available online free of charge. For example, audits and reports available from the Office of the State Auditor are contained in a searchable database at www.osa.state.ms.us and opinions from the Mississippi Supreme Court are available at www.mssc.state.ms.us. Otherwise, most agency regulations have adopted reasonable fee provisions. For example, the Department of Archives and History charges \$.10 per page for copying and \$15 per hour for research. The first hour of research is free for Mississippi residents. By contrast, the State Department of Education charges \$.25 per page and, if the search takes more than 15 minutes, an hourly search fee. For a general list of agency websites, see section III. H., below.

E. Who enforces the act?

The act is enforceable civilly by any requester. § 25-61-5. Suit must be filed in the chancery court of the county in which the public body sits. § 25-61-13(1). Proceedings take precedence over all other matters on the court docket. § 25-61-13(3).

1. Attorney General’s role.

The act does not specifically address the role of the Attorney General.

2. Availability of an ombudsman.

See below.

3. Commission or agency enforcement.

The requestor has the option to request an opinion from the Ethics Commission before filing suit. The Ethics Commission must act within 14 days after obtaining the records in question. §25-61-13(1) (b).

F. Are there sanctions for noncompliance?

For willfully and knowingly denying access to non-exempt public records, civil liability exists for a sum not in excess of \$100 and all reasonable expenses of bringing the proceeding. § 25-61-15. Attorneys’ fees are recoverable “expenses.” *Miss. Dept. of Wildlife, Fisheries and Parks v. Miss. Wildlife Enforcement Officers Ass’n*, 740 So. 2d 925 (Miss. 1999). An agency acts “willfully” if it acts against the opinion of its

own legal counsel, *Id.*, or if legal advice concerning charges is contrary to agency’s public records policy. *Harrison Co. Dev. Comm’n v. Kinney*, 920 So. 2d 497 (Miss. 2006). An agency did not act “willfully” where mistakes were made concerning the response time and records were eventually provided. *LaCroix v. Marshall County Bd.*, 28 So.3d 650 (Miss. 2009).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open records statute.

1. Character of exemptions.

a. General or specific?

The exemptions are specific, except for a catchall exemption for records specifically declared to be confidential or privileged by any constitutional or statutory law or a decision of a state or federal court. § 25-61-11. This would include information which federal law classifies as “Sensitive But Unclassified” given to the state health department. Att’y Gen. No. 2008-358, Aug. 8, 2008 to Thompson.

b. Mandatory or discretionary?

Most exemptions are discretionary. They do not require that the records be kept confidential. They are not grounds for resisting a court subpoena. *United States v. Dale*, 155 F.R.D. 149, 152 (S.D. Miss. 1994). The immunity provisions of the Tort Claims Act prevent liability claims from being asserted against officials who choose to release exempt material. Att’y General No. 2000-74, March 10, 2000 to Hinder. However, certain statutory exclusions found outside the Public Records Act require confidentiality.

c. Patterned after federal Freedom of Information Act?

The exemptions are not directly patterned on the federal exemptions.

Unlike the federal Freedom of Information Act, the Mississippi Act contains no exemption for records concerning pre-decisional and deliberative matters. Att’y Gen. Oct. 16, 1989 to McKinley.

2. Discussion of each exemption.

a. Documents subpoenaed by the Attorney General under his authority to investigate white collar and official crime. § 7-5-59(6).

b. Records developed among judges and their aides. § 9-1-38.

c. Records developed among juries concerning judicial decisions. § 13-5-97.

d. Social security numbers, telephone numbers and date of birth and age information in voter registration files are exempt. §23-15-165(6) (a).

e. Personnel records and applications for employment except those which may be released to the applicant or with the prior written consent of the applicant. § 25-1-100(1). This does not exempt the names of persons employed and the compensation paid to such person. Att’y Gen. June 5, 1984 to Bennie G. Thompson. Gross salary and accrued leave time are not exempt. *Miss. Dept. of Wildlife, Fisheries & Parks v. Miss. Wildlife Enforcement Officers Ass’n*, 940 So. 2d 925 (Miss. 1999). A form listing teachers by name, race, sex, areas of endorsement, grade ranges, and salary is not exempt, but teachers’ home telephone numbers would be. Att’y Gen. July 2, 1984 to Smith. A mailing list for employees is not exempt. Att’y Gen. June 10, 1987 to Singletary. A “Form for Absence of Staff” not kept in a personnel file is not exempt. Att’y Gen. May 20, 1992 to Oakes. Documents relating to contract employee authorizations under § 25-9-120 are not exempt. § 25-1-100(4). Evaluations of public school administrators are not exempt. § 37-3-2(23). Statements made by a police officer during an internal affairs investigation are not subject to disclosure. *Miss. Ethics Commission Op. R-08-001* (March 6, 2009). Contracts between a university and a university football coach and basketball coach are public records

that are not exempt as personnel records. Miss. Ethics Commission Op. R-08-009 (April 3, 2009).

f. Employment test questions and answers. § 25-1-100(2).

g. Letters of recommendation. § 25-1-100(3).

h. Records which represent or constitute the work product of any attorney, district attorney or county prosecuting attorney representing a public body and which are related to litigation made by or against such public body, or in anticipation of prospective litigation. § 25-1-102. This includes itemized statements relating to attorney's fees, but not the total dollar amount of attorney's fees and expenses paid. Op. Att'y Gen. Jan. 14, 1985 to Orma R. Smith Jr., citing *Journal Publishing Co. v. Board of Trustees*, No. 125,759 (Hinds County Chancery Court, Nov. 2, 1984). An expert's appraisal prepared in anticipation of an eminent domain suit is exempt. Att'y Gen. Op. 2005-0294 July 1, 2005, to Graham.

i. Records of executive sessions of public bodies are exempt by implication of the Open Meetings Act, Miss. Code Ann. § 25-41-7, according to the Attorney General. Op. Att'y Gen. April 2, 1990 to W. Rayford Jones.

j. Trade secrets and proprietary information developed by a college under contract with a business are exempt. § 25-61-9(3). The definition of "trade secret" in this statute is broader than the definition found in §75-26-3. *Caldwell & Gregory, Inc. v. University of Southern Miss.*, 716 So. 2d 1120 (Ct. App. 1998).

k. Waste minimization plans developed under the Mississippi Comprehensive Multimedia Waste Minimization Act of 1990 are exempt. § 25-61-9(5). See also § 49-31-1 *et seq.*

l. Data processing software that is subject to license restrictions, or is a trade secret, or is "sensitive" is exempt. § 25-61-9(6).

m. Home address and telephone number of any law enforcement officer, criminal private investigator, judge, district attorney or their spouse or child. §25-61-12(1).

n. Investigative reports in the possession of a law enforcement agency are exempt. § 25-61-12(2)(a); investigative reports go beyond the scope of incident reports and include records whose disclosure would harm an investigation, or reveal the identity of informants or witnesses, or disclose investigative techniques, or deprive a person of the right to a fair trial, or endanger a public official or impede a prosecutor, or pertain to quality control or PEER review. §25-61-3(f)(1). *Mississippi Publishers Corp. v. Coleman*, 515 So. 2d 1163, 1167 (Miss. 1987). The interests protected by this statute may be outweighed by a First Amendment interest in airing a videotape used as evidence at a hearing, *TV-i Inc. v. Jackson*, 19 Med. L. Rptr. 1312 (Aug. 28, 1991).

o. Records which disclose information about a person's individual tax payment or status. § 27-3-77. A public employee's salary deductions for taxes are exempt. Att'y Gen. Aug. 8, 1985 to Williamson; Att'y Gen. Op. 2001-0753, Jan. 22, 2002 to Howell.

p. Appraisal information which concerns the sale or purchase of real property for public purposes prior to public announcement of the purchase or sale, where the release of such records would have a detrimental effect on such sale or purchase. § 31-1-27.

q. Test questions and answers to be used in future academic examinations, and letters of recommendation respecting admission to any educational agency or institution. § 37-11-51. This does not exempt records of student performance at the Mississippi Law Enforcement Officers' Training Academy. Op. Att'y Gen. July 28, 1983 to Kent McDaniel.

r. Records which contain information about the location of any specific archaeological site, where in the opinion of the agency disclosure would create a substantial risk of damage or destruction to the historical value of the site or to private property rights. § 39-7-41.

s. Records maintained by public hospitals, except the official minutes of the board of trustees and certain financial reports. § 41-9-68. Att'y Gen. No. 2009-160, May 1, 2009 to Sanders.

t. Individually identifiable information given to the State Birth Defects Registry is exempt. §41-21-205(8)(b).

u. Records in the possession of the Mississippi Department of Health, Bureau of Vital Statistics, which would be of no legitimate and tangible interest to the person making a request for access to such records. § 41-57-2. Lists of deceased persons sent to circuit clerks are not exempt if a person has a legitimate tangible interest in such records. Att'y Gen. Op. 2003-0555, Oct. 24, 2003 to Allen.

v. Reports of the state medical examiner are "maintained as confidential so as to protect the doctor/patient privilege." § 41-61-63(2) (a).

w. The State's Concealed Weapon's Law exempts, for a period of 45 days from the date of issuance of license or final denial of an application, records that show who has gotten or applied for concealed weapon's permits. § 45-9-101 (8).

x. Records of the Mississippi Justice Information Center, which collects information on crime and criminal offenders, including finger prints and criminal records, and separately-maintained intelligence and investigative files, are exempt. §45-27-19(1), (2). Unauthorized release of criminal history record information is a crime. §45-27-13(1).

y. Trade secrets in records relating to the financial aspects of state authorized but privately run prisons are exempt. § 47-5-575.

z. Voluntary internal environmental self-evaluation reports of industries regulated by the Department of Environmental Quality are exempt from the Public Records Act. § 49-2-51.

aa. Noncontroverted case medical reports, rehabilitation counsel-or reports and psychological reports of the Workers Compensation Commission "insofar as they refer to accidents, injuries and settlements." § 71-3-66. The Attorney General's office has said this exempts the names of all persons filing claims of work-related injuries. Att'y Gen. June 3, 1987 to Bennett. These records are open, however, to "the parties satisfying the commission of their interest in such records and the right to inspect them." § 71-3-66.

bb. Test questions to be used in future license examinations, license applications, and recommendations for action on applications are exempt except when the application is requested by the applicant or is released with the applicant's prior written consent. § 73-52-1(2).

cc. Information "in connection with any investigation or examination" under the Mississippi Securities Act is exempt. § 75-71-111(c).

dd. Commercial and financial information of a proprietary nature required to be submitted to a public body is exempt, unless it is submitted to a regulatory agency by a public utility and is related to the establishment of, or changes in, rates regulated by the agency. § 79-23-1 (1) (Supp. 1987). In fact, if the agency seeks to disclose voluntarily trade secret or confidential commercial or financial information, whether it comes from a utility or not, the agency must give notice to the submitter. The submitter may then within a reasonable time to obtain a court order "protecting such records as confidential." § 25-61-9(1) (Supp. 1996). *South Central Bell Telephone Co. v. Mississippi Public Service Corp.*, No. 123,666 (Hinds Co. Chancery Ct., June 12, 1984) (utility costs, market analysis, market projections protected); Att'y Gen. Oct. 16, 1989 to McKinley (Public Service Commission records). This would apply to Medicaid cost reports for nursing homes. Att'y Gen. March 4, 1987 to Simmons. Cf. *Mississippi Health Care Ass'n v. State of Mississippi*, No. 134, 127 (Hinds Co. Chancery Ct., April 12, 1988). It would also apply to a computer database of investors and investment information compiled by the Research and Development Center. Att'y Gen. Nov. 21, 1986 to Thrash. A list of public water district customers is not confidential, but their customers' bank account numbers are confidential. Att'y Gen. July 18, 1994 to Harper.

ee. Records provided by an insurer in the course of financial examination by the Commissioner of Insurance are exempt. § 83-5-209.

ff. Records maintained by domestic violence shelters, except official minutes and certain financial reports. § 93-21-109.

B. Other statutory exclusions.

a. Social security numbers must not be inadvertently disclosed by a state agency to the general public or to those without a “lawful and legitimate” need to know them. §25-1-111.

b. All Mississippi Ethics Commission proceedings and records relating to any investigation shall be kept confidential, but this requirement is not to interfere with the Commission’s “authority.” § 25-4-23 (Supp. 1996). See *Ethics Comm v. Committee on Professional Responsibility*, 672 So. 2d 1222 (Miss. 1996).

c. The Public Employees’ Retirement Systems’ individual member records are not to be disclosed without the individual’s prior written consent. § 25-11-119(3).

d. Permanent records and cumulative folders of public school students shall not be available to the general public. § 37-15-3.

e. Library records relating to the identity of a user relative to the user’s use of books are confidential. § 39-3-365. Generally, books and papers owned by a municipal library are public records under the act. Att’y Gen. April 29, 1993 to Ellis. Budgets and proposed budgets of libraries are likewise public. Att’y Gen. September 20, 2002 to Gough.

f. Mississippi Bureau of Narcotics to make and maintain a private, nonpublic record of certain convictions. § 41-29-139(c)(2)(A).

g. Individually identifiable information received for purpose of ambulatory surgical facility license shall not be disclosed except in a licensure proceeding. §41-75-19.

h. Records involving children, which includes all youth court records, social records, law enforcement records and agency records under the Youth Court Law, may not be disclosed except by order of the Youth Court. § 43-21-105(u), -251.

i. Information obtained in the discharge of official duty by a field officer as an employee of the Department of Corrections shall be privileged and shall not be disclosed. § 47-7-21.

j. Information obtained by the Environmental Commission regarding trade secrets shall be kept confidential if a written confidentiality claim is made when the information is supplied and such confidentiality claim allows for disclosure to authorized department employee and to EPA. §49-17-39.

k. Trade secrets and “confidential information concerning business activities” acquired by the Commission on Environmental Quality as it relates to water and water resources must be kept confidential and it is a misdemeanor for any public employee to divulge such information. § 51-3-44.

l. Highway patrol accident reports are for the confidential use of the department, but may be disclosed to persons involved in the accident, the estate, spouse or next of kin. § 63-3-417.

m. All pleadings, reports, files and records pertaining to adoption proceedings shall be confidential and shall be withheld from inspection except on court order. § 93-17-25.

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

The statute recognizing a privilege not to disclose confidential medical communications, § 13-1-21, has been said to require that certain city emergency medical services records be kept confidential. Att’y Gen. Oct. 6, 1993 to Lawrence. A statute authorizing blood tests of dead or unconscious accident victims, § 63-1-1-7, has been said to

exempt by implication those tests from disclosure. Att’y Gen. Dec. 29, 1993 to Younger. Most medical records in a mental commitment file are exempt and not to be released absent a court order or with authorized consent. Op. Att’y Gen. December 2, 2002 to McGee.

D. Are segregable portions of records containing exempt material available?

Yes. §§ 25-61-5(a), 25-61-9(2). A police department can delete the numbers of informants from its telephone bills before disclosing them. Op. Att’y Gen. March 18, 1992 to Freida Gunn Collins.

E. Homeland Security Measures.

Computer vulnerability study is exempt. Att’y Gen. No. 2004-342, July 30, 2004 to McLeod.

III. STATE LAW ON ELECTRONIC RECORDS

A. Can the requester choose a format for receiving records?

Miss. Code Ann. § 25-61-10(2) provides: “A public body shall provide a copy of the record in the format requested if the public body maintains the record in that format.”

B. Can the requester obtain a customized search of computer databases to fit particular needs?

Records must be available for “inspection” and public bodies must “ensure reasonable access to records electronically maintained.” § 25-61-2. See also §25-61-10(1).

C. Does the existence of information in electronic format affect its openness?

No. § 25-61-2. This statute may not overrule Op. Att’y Gen. Aug. 14, 1995 to Rickey Gray, which says the electronic version of Mississippi Code does not have to be released because it is copyrighted. § 1-1-9.

D. How is e-mail treated?

Contents of an e-mail system are public records. See Miss. Code Ann. § 25-61-3(b) (defining “public records”) to include “documentary materials, regardless of physical form or characteristics”); §25-61-7(a) (access to “electronically accessible data.”); Att’y Gen. No. 2007-543, Oct. 26, 2007 to Brown.

1. Does e-mail constitute a record?

Yes.

2. Public matter on government e-mail or government hardware

Yes. Open.

3. Private matter on government e-mail or government hardware

Yes, depending on content.

4. Public matter on private e-mail

Not covered.

5. Private matter on private e-mail

Not covered.

E. How are text messages and instant messages treated?

No special treatment.

1. Do text messages and/or instant messages constitute a record?

Open. See. III.D, supra.

2. Public matter message on government hardware.

Open.

3. Private matter message on government hardware.

Public, depending on content.

4. Public matter message on private hardware.

Not covered.

5. Private matter message on private hardware.

Not covered.

F. How are social media postings and messages treated?

No special treatment.

G. How are online discussion board posts treated?

No special treatment.

H. Computer software

Defined. § 25-61-3(a), (d).

1. Is software public?

Software is not public if the license prohibits disclosure and it is a trade secret, or if it is “sensitive” i.e., controls access to exempt information, or security reasons, or information whose disclosure would “require significant intrusion into the business of a public body.” §25-61-9(6). §25-61-10(1). Att’y Gen. No. 04-193; June 4, 2004 to Thompson.

2. Is software and/or file metadata public?

See I.I., *supra*.

I. How are fees for electronic records assessed?

Fees for “electronically accessible data” charges must be reasonably related to cost but may take into account the type of information, the purpose for the request, and the commercial value of the information. §25-61-7(a).

J. Money-making schemes.**1. Revenues.**

See I.I., *supra*.

2. Geographic Information Systems.

See I.I., *supra*.

IV. RECORD CATEGORIES -- OPEN OR CLOSED**A. Autopsy reports.**

Are exempt from disclosure. See § 41 -61-63(a). Att’y Gen. No. 2008-142, June 6, 2008 to Martin.

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

Identity of informants who disclosed improper waste disposal to DEQ is exempt. *Singing River Elec. Power Ass’n v. State ex rel Miss. Dept. Env. Quality*, 693 So. 2d 368 (Miss. 1997).

1. Rules for active investigations.

Exempt

2. Rules for closed investigations.

May not be exempt. See IV.N., *infra*.

C. Bank records.

Closed if commercial and financial information of a proprietary nature is required to be submitted to a public body. See § 79-23-1 (1).

D. Budgets.

Are public records. Att’y Gen No. 2002-479, Sept. 20, 2002 to Gough.

E. Business records, financial data, trade secrets.

Closed if commercial and financial information of a proprietary nature required to be submitted to a public body, and not from a utility concerning rates. See § 79-23-1 (1). See II.A.2[bb], *supra*. Confidential information about animal research at State University is exempt. *Miss. State Univ. v. People for Ethical Treatment of Animals*, 992 So. 2d 595 (Miss. 2008).

F. Contracts, proposals and bids.

Open unless considered appraisal information. See § 31-1-27. Att’y Gen. No. 90-181, March 21, 1990 to Tabb. An insurance policy, plan description, rate structure and renewal notice are public records. Att’y Gen. No. 2007-534, Oct. 19, 2007 to Morgan.

G. Collective bargaining records.

Open.

H. Coroners reports.

Closed. See § 41-61-63(a), IV.4.A., *supra*.

I. Economic development records.

Open. See *Harrison County Dev. Comm’n v. Kinney*, 920 So. 2d 497 (Miss. 2006).

J. Election records.

Open. Att’y Gen. Nov. 2, 1994 to Gunn. Voter registration records are open, except for Social Security numbers, phone numbers, age and date of birth. §23-15-167(a), (b). Att’y Gen. No. 2009-25, Feb. 13, 2009 to Ivy.

1. Voter registration records.

Open.

2. Voting results.

Open.

K. Gun permits.

Closed for a period of 45 days from issuance or denial of a permit. § 45-9-101(8).

L. Hospital reports.

Generally closed except board minutes and certain financial reports. See § 41-9-68. “Run reports” for city EMS units are public records but name of person treated and medical information is exempt. Att’y Gen. No. 93-592, Oct. 6, 1993 to Lawrence.

M. Personnel records.

Generally closed. See § 25-1-100(1).

1. Salary.

Gross salary is public but not net salary and tax status are not. Att’y Gen. No. 93-900, March 23, 1994 to Stringer.

2. Disciplinary records.

Closed.

3. Applications.

Depends on content.

4. Personally identifying information.

Information such as social security numbers, telephone numbers, dates of birth and age information should be removed. Att’y Gen.

No. 3-555, Oct. 24, 2003 to Allen. Name, age, gender, and insurance information should be disclosed. Att’y Gen. No. 2009-366, June 26, 2009 to Morgan. Home addresses should be disclosed unless they are for law enforcement personnel. Att’y Gen. No. 2007-514, Oct. 12, 2007 to Brown.

5. Expense reports.

Depends on content.

6. Other.

Depends on content.

N. Police records.

Generally permitted to be closed by law, but frequently open in practice. *See* § 45-29-1. The home address and phone number of a law enforcement officer, judge, district attorney or spouse or child of one of these officials is exempt. §25-61-12(1).

1. Accident reports.

Incident reports are public records. §25-61-12(c). They are defined as narrative descriptions of an alleged offense including the name and identification of the person charged, the time, date and location of the offense and the property involved, if known. §25-61-3(e). Contact information does not have to be given. Att’y Gen. No. 2009-534, Oct. 5, 2009 to Bruni. A law enforcement agency must include a narrative description on the incident report, and the agency’s failure to include a narrative description in what it discloses fails to comply with the Act. Miss. Ethics Commission Op. R-10-020 (February 11, 2011).

2. Police blotter.

See I.N.1, *supra*.

3. 911 tapes.

Are public records. Att’y Gen. No. 98-242, June 12, 1998 to Legett. *See also* Att’y Gen. No. 2007-07, Feb. 9, 2007 to Knight. But some information may be exempt. Att’y Gen. No. 2002-282, May 24, 2002 to Givens.

4. Investigatory records.

a. Rules for active investigations.

Exempt to the extent they involve more than an incident report. §§25-61-12(2)(a), 25-61-3(f).

b. Rules for closed investigations.

None, but records should become public if release would not harm the investigation or disclose investigatory techniques or informants.

5. Arrest records.

See I.N.1., *supra*.

6. Compilations of criminal histories.

Closed.

7. Victims.

Victim personal information, and letters of support on behalf of victims, are exempt. §25-61-12(3).

8. Confessions.

Closed.

9. Confidential informants.

Records that would reveal the identity of informants fall under the definition of “investigative report.” *See* N.4.a and N.4.b above. § 25-61-3(f)(ii).

10. Police techniques.

Records that would disclose investigatory techniques and /or the results of investigatory techniques fall under the definition of “investigative report.” *See* N.4.a and N.4.b above. § 25-61-3(f)(iv).

11. Mug shots.

Public, if classified as part of the “identification” of the person charged. §§25-61-3(e), 25-61-12(2)(b).

12. Sex offender records.

Sex offender registry is public; but not identity of victims. §45-33-49.

13. Emergency medical services records.

Required to be kept confidential. Att’y Gen. No. 93-0592, Oct. 6, 1993 to Lawrence.

O. Prison, parole and probation reports.

There is no general exemption for prison jail files. Att’y Gen. No. 2002-282, May 24, 2002 to Givens. Financial records of private prisons are public, except those that contain fraud secrets. §47-5-575.

P. Public utility records.

A city’s utility records are not exempt except to the extent they contain confidential commercial or financial information. Att’y Gen. No. 2008-107, April 18, 2008 to Dye, or social security numbers. Att’y Gen. No. 2006-291, July 10, 2006 to Baker.

Q. Real estate appraisals, negotiations.

1. Appraisals.

Exempt. §31-1-27.

2. Negotiations.

Exempt.

3. Transactions.

Taxpayer who told tax assessor that transaction information was confidential must be given notice before information is disclosed. Att’y Gen. No. 1-111, March 9, 2001 to Allen.

4. Deeds, liens, foreclosures, title history.

Open.

5. Zoning records.

Open.

R. School and university records.

No specific state law.

1. Athletic records.

No specific state law

2. Trustee records.

No specific state law

3. Student records.

No specific state law

4. Other.

Confidential financial information developed by a college or university under contract within two business entity is exempt. §25-61-9(3). Test questions and answers for future examinations are exempt. §37-11-51.

S. Vital statistics.

Only available to those with “legitimate and tangible interest.” §41-57-2.

1. Birth certificates.

Only available to those with “legitimate and tangible interest.” §41-57-2.

2. Marriage & divorce.

Only available to those with “legitimate and tangible interest.” §41-57-2.

3. Death certificates.

Only available to those with “legitimate and tangible interest.” §41-57-2.

4. Infectious disease and health epidemics.

No specific state law.

V. PROCEDURE FOR OBTAINING RECORDS

A. How to start.

1. Who receives a request?

Not specified. The public body’s written procedures adopted pursuant to § 25-61-5(1) should state requirements for cost, time, place and method of access which must be “reasonable.” They usually identify the person or office to whom a request must be made.

2. Does the law cover oral requests?

No.

a. Arrangements to inspect & copy.

Inspection allowed on “reasonable” terms. § 25-61-5(1). The duty to allow inspection may not require the public body itself to search. Op. Att’y Gen. Oct. 5, 1994 to Jo-Ann Corvis.

b. If an oral request is denied:

File a written one.

(1). How does the requester memorialize the refusal?

File written request and public body must deny “in writing” with a “statement of the specific reasons for the denial.” §25-61-5(2). Public body must keep denials for three years. *Id.*

(2). Do subsequent steps need to be in writing?

Yes

3. Contents of a written request.

a. Description of the records.

A written request should, if possible, describe the requested records as specifically as feasible.

b. Need to address fee issues.

See also I.D.1., *supra*.

Fees must be paid in advance. § 25-61-7.

c. Plea for quick response.

Request should ask for a response within 7 working days.

d. Can the request be for future records?

Records must exist, i.e., not be future records, before the statute applies to a request.

e. Other.

Ask for a telephone call if the search will cost more than a specified amount.

B. How long to wait.

1. Statutory, regulatory or court-set time limits for agency response.

The public body must produce the record or deny production within 7 working days from the date of a request, or within one day if it has not adopted written procedures. § 25-61-5(1)(a). However if you give

reasons for delay it can take an additional 7 working days, for a total of 14. §25-61-5(1)(b)..

2. Informal telephone inquiry as to status.

Informal telephone inquiries concerning the status of the request may be made.

3. Is delay recognized as a denial for appeal purposes?

The Act does not classify delay as a denial, but it does specifically require action within a total of 14 days.

4. Any other recourse to encourage a response.

As a practical matter, the only recourse to encourage a response, other than editorial comment, is to get your lawyer to call the public body or, if necessary, file suit.

C. Administrative appeal.

1. Time limit.

None

2. To whom is an appeal directed?

a. Individual agencies.

Not unless agency’s written policy specifies.

b. A state commission or ombudsman.

Mississippi Ethics Commission

c. State attorney general.

No.

3. Fee issues.

Nothing specific to Ethics Commission review.

4. Contents of appeal letter.

a. Description of records or portions of records denied.

Written denial is attached to request for Ethics Commission review. §25-61-13(b)(i).

b. Refuting the reasons for denial.

Recommended.

5. Waiting for a response.

Public body has 14 days after receiving request from Ethics Commission. §25-61-13(1)(b).

6. Subsequent remedies.

Ethics Commission may mediate. Opinion is to be considered if suit is filed. §25-61-13(10)(a).

D. Court action.

1. Who may sue?

Any person who is denied the right to inspect and/or copy public records may sue. § 25-6 1-13; *Board of Trustees v. Van Slyke*, 510 So. 2d 490 (Miss. 1987). Also, third parties who furnish to public bodies records which contain trade secrets or confidential information may sue to obtain a court order protecting such records as confidential. § 25-61-9 (1); *Mississippi Health Care Ass’n State of Mississippi*, No. 134,127 (Hinds Co. Chancery Ct., April 12, 1988).

2. Priority.

Proceedings under the Act take precedence on the docket over all other matters and shall be assigned for hearing and trial at the earliest

practicable date. § 25-61-13(3).

3. Pro se.

The chancellor is unlikely to take a *pro se* suit seriously. A requester litigating *pro se* is likely to lose rights on technical or procedural grounds.

4. Issues the court will address:

a. Denial.

Denial of records. § 25-61-13.

b. Fees for records.

Fees for records. § 25-61-13.

c. Delays.

Delays in procedure. § 25-61-13.

d. Patterns for future access (declaratory judgment).

Declaratory judgment on procedural issues is available in Mississippi. Miss. R. Civ. P. 57.

5. Pleading format.

Mississippi's rules of civil procedure generally follow the federal rules.

6. Time limit for filing suit.

None. The general statute of limitations in Mississippi is three years. § 15-1-49. Obviously, a person seeking prompt access to public records would be well advised to file suit promptly.

7. What court.

Suit is to be filed in the chancery court of the county in which the public body is located. § 25-61-13(1). A public body is not "located" in a county simply because it does business there. *Board of Trustees v. Van Slyke*, 510 So. 2d 490, 492-93 (Miss. 1987).

8. Judicial remedies available.

The Act specifically authorizes injunctive relief. § 25-61-13(2).

9. Litigation expenses.

A person who "shall willfully and knowingly deny to any person access to any public record which is not exempt" shall be liable for a penalty up to \$100 plus "all reasonable expenses incurred by such person bringing the lawsuit." § 25-61-15. Denial of "access" means

denial of either inspection or copying. See I.F., *supra*. "Willfully and knowingly" means the denial was not "mere mistake or carelessness." Individual members of a public body may be held personally liable for willful denial only if the member, apart from the public body, withholds, rejects, or refuses to grant access. *Delta Democrat Publishing Co. v. City of Greenville*, No. 47,014 (Washington Co. Chancery Ct., Ruling of the Court on Motions, Nov. 13, 1986).

a. Attorney fees.

See I.f., *supra*.

b. Court and litigation costs.

See I.F., *supra*.

10. Fines.

A penalty of up to \$100 may be imposed. § 25-61-15.

11. Other penalties.

None.

12. Settlement, pros and cons.

Settlement at an early stage is advisable if the records sought can be obtained. State courts generally display an unduly conservative attitude toward court awards of attorney's fees, and it will be difficult for a person suing successfully to recover all fees.

E. Appealing initial court decisions.

1. Appeal routes.

Appeal is to the Mississippi Supreme Court, which may choose to refer the case to the Mississippi Court of Appeals.

2. Time limits for filing appeals.

An appeal must generally be brought within 30 days after entry of final judgment by the trial court. See Miss. R. App. P. 4.

3. Contact of interested amici.

Amicus briefs are rare in Mississippi because media organizations are generally unwilling to finance them. Press associations in Mississippi include the Mississippi Press Association, 351 Edgewood Terrace, Jackson, MS 39206; Mississippi Broadcasters Association, P.O. Box 4561, Jackson, MS 39216.

F. Addressing government suits against disclosure.

Not specifically addressed in the Act.

Open Meetings

I. STATUTE -- BASIC APPLICATION.

A. Who may attend?

Meetings are open to “the public.” § 25-41-5 (1). Under Mississippi law, a meeting is defined as an assemblage of members of a public body at which official acts may be taken. § 25-41-3.

B. What governments are subject to the law?

1. State.

Public bodies subject to the Act include any “policy-making entity, or committee thereof, of the State of Mississippi, or any political subdivision or municipal corporation of the state.” § 25-41-3 (a)

2. County.

Yes. § 25-41-3(a).

3. Local or municipal.

Yes. § 25-41-3(a).

C. What bodies are covered by the law?

1. Executive branch agencies.

Executive branch agencies are covered, with the exception of public and private hospital staffs, public and private hospital boards and committees thereof, law enforcement officials, the military, the state probation and parole board, the workers compensation commission, the arbitration council, licensure, suspension and discipline proceedings by the State Board of Dental Examiners, hearings and meetings of the State Tax Commission and hearing officers, and the Board of Review of the State Tax Commission. § 25-41-3(a).

a. What officials are covered?

Each individual member of the public body that is covered by the law. § 25-14-15.

b. Are certain executive functions covered?

Executive functions are covered, excluding the exceptions noted in C.1., *supra*.

c. Are only certain agencies subject to the act?

Executive branch agencies are covered, excluding the statutory exceptions. C.1., *supra*.

2. Legislative bodies.

Standing, interim, or special committees of the legislature are covered, but not subcommittees or legislative conference committees. § 25-41-3(a); Op. Att’y Gen. Oct. 17, 1989 to Rep. Jim Simpson (legislature may not by its own rules negate the applicability of the Act to legislative meetings).

3. Courts.

The judiciary and all jury deliberations are exempt. § 25-41-3(a).

4. Nongovernmental bodies receiving public funds or benefits.

The Act covers entities both “created by statute or executive order” and “supported wholly or in part by public funds” or that expends public funds. § 25-41-3(a). Private or quasi-public entities that do not meet this test are not covered. *See* Op. Att’y Gen. September 21, 1989 to Cecil Brown (non-profit corporation receiving state money not covered); Op. Att’y Gen. Dec. 4, 1987 to Sen. Irb Benjamin (non-profit community action agency corporation not created by statute or executive order so not a “public body.”) Op. Att’y Gen. Mar. 9, 1994

to Jerry L. Mills, City Attorney of Ridgeland (non-profit baseball corporation, even though partially funded by the City, is not covered because it is not created by statute or order).

5. Nongovernmental groups whose members include governmental officials.

These are not covered unless they meet the test set forth in § 25-41-3(a). and are both “created by statute or executive order” and are “supported wholly or in part by public funds.” A county-wide volunteer governmental council is not covered by the Open Meetings Act but attendance at the meeting by members of locally elected boards may be covered. *See* Op. Att’y Gen. Feb. 24, 1994 to Ronald S. Cochran, City of Biloxi.

6. Multi-state or regional bodies.

These are not covered unless they meet the test set forth in § 25-41-3(a) (Supp. 2000) and are both “created by statute or executive order” and are “supported wholly or in part by public funds.”

7. Advisory boards and commissions, quasi-governmental entities.

These are covered. § 25-41-3(a); *Major and Aldermen v. Vicksburg Printing and Publishing Co.*, 434 So. 2d 1333, 1336-38 (Miss. 1983) (Vicksburg Planning Commission); Op. Att’y Gen. Aug. 7, 1981 to Howard C. Ross Jr. (Jackson Planning Commission).

8. Other bodies to which governmental or public functions are delegated.

These are covered if they meet the test set forth in § 25-41-3(a) (Supp. 2000) and are both “created by statute or executive order” and are “supported wholly or in part by public funds.” The Board of Trustees of State Institutions of Higher Learning is not exempt, even though it is created by constitution as well as statute. *Board of Trustees v. Mississippi Publishers Corp.*, 478 So. 2d 273-78 (Miss. 1985). The Mississippi Public Service Commission is not exempt and is subject to the open-meetings law. Op. Att’y Gen. Op. 2009-00491 (August 27, 2009).

9. Appointed as well as elected bodies.

Whether the public body is elected or appointed is irrelevant to coverage under the Open Meetings Act.

D. What constitutes a meeting subject to the law.

1. Number that must be present.

To have a “meeting,” there must be an “assemblage of members of a public body at which official acts may be taken upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.” § 25-41-3(b). There is no quorum requirement. Chance meetings or social gatherings are exempt. § 25-41-17. A “chance” meeting cannot be a meeting which was called, either officially or unofficially. Factors to be considered in determining whether a meeting is a “social gathering” include the activities that take place, the notice given, the agenda, and claims for per diem and travel expenses. The Mississippi Supreme Court has listed a number of factors to consider when determining whether an activity is business or social: (1) the activity that takes place, (2) advance call or notice, (3) agenda, (4) claim for per diem and travel expenses, and (5) other pertinent factors. Op. Att’y Gen. Op. 2008-00446 (September 12, 2008); *see also Gannett River States Publishing Corp., Inc. v. City of Jackson*, 866 So. 2d 462 (Miss. 2004). A pre-arranged dinner meeting among a quorum (two members) of the Mississippi Transportation Commission at which matters within the Commission’s jurisdiction was discussed was a “meeting” within the Act. Miss. Ethics Commission Op. M-09-007 (Nov. 6, 2009). A luncheon held on the day of a board meeting was held not to be a “social gathering” in *Board of Trustees v. Mississippi Publishers Corp.*, 478 So. 2d 269, 278 (Miss. 1985). A public board can, however, attend a social function without complying with the Act “where no action is taken and their only function is to listen” *Hinds County Board of Super-*

visors v. Common Cause, 551 So. 2d 107, 123 (Miss. 1989). Meetings with other public bodies are covered. *Id.*

a. Must a minimum number be present to constitute a “meeting”?

Under the statute, there is no “minimum” number that must be present, although the meeting must be one at which official action may be taken. Official action usually can be taken only if a quorum of the body is present.

b. What effect does absence of a quorum have?

None, unless no official act may be taken at a gathering because there is a lack of a quorum, which may affect whether the meeting is open to the public.

2. Nature of business subject to the law.

a. “Information gathering” and “fact-finding” sessions.

These are covered. *Board of Trustees v. Mississippi Publishers Corp.*, 478 So. 2d 269, 278 (Miss. 1985). ‘Work sessions’ are also covered. Op. Att’y Gen. Aug. 22, 1984 to Franklin C. McKenzie Jr. A tour of a renovated courthouse by three members of a board of supervisors would be a “meeting” under the Open Meetings Law. Att’y Gen. Op. 2008-00446 (Sept. 12, 2008).

b. Deliberations toward decisions.

These are covered. *Board of Trustees v. Mississippi Publishers Corporation*, 478 So. 2d 269, 278 (Miss. 1985). Board members cannot meet informally before the meeting to decide how they will vote. Op. Att’y Gen. Feb. 15, 1995 to Freida E. Sipes. Cf. *Maxey v. Smith*, 823 F. Supp. 1321, 1331 (N.D. Miss. 1993) (potential due process violation). “Workshop” meetings one-hour before an official meeting are subject to the Open Meetings Law. Att’y Gen. Op. 2007-00562 (Oct. 26, 2007).

3. Electronic meetings.

Any means of assemblage by electronic means are covered by the Law. § 25-41-3(b).

a. Conference calls and video/Internet conferencing.

Telephone polls may not be used to transact public business. Op. Att’y Gen. April 20, 1984 to George S. Smith; Op. Att’y Gen. May 14, 1987 to Sharron F. Abide. If telephone polls are taken, the deliberations must have taken place pursuant to the Open Meetings Act. *Board of Trustees v. Mississippi Publishers Corporation*, 478 So. 2d 269, 278-79 (Miss. 1985). See also, Op. Att’y Gen. Sept. 26, 1990 to Katherine Skelton (telephone conference call may be used by a board member to participate in a lawfully called meeting provided there is a quorum physically present and it is done in a manner that will allow the public in attendance to hear all discussion and deliberations regarding any and all matters taken up at such a meeting). § 83-23-219. (Mississippi Life and Health Ins. Guaranty Association to establish regular times and places for conference calls). See also Op. Att’y Gen. Jan. 23, 2001 to Kenneth Mayfield (board of trustees for a school district may not formulate policy by way of a telephone conference or poll.).

b. E-mail.

No specific reference in the Act, but presumably covered by § 25-41-3(b).

c. Text messages.

No specific reference in the Act, but presumably covered by § 25-41-3(b).

d. Instant messaging.

No specific reference in the Act, but presumably covered by § 25-41-3(b).

e. Social media and online discussion boards.

No specific reference in the Act, but presumably covered by § 25-41-3(b).

E. Categories of meetings subject to the law.

1. Regular meetings.

a. Definition.

“Meeting” means an assemblage of members of a public body at which official acts may be taken upon a matter over which the public body has supervision, control, jurisdiction or advisory power. “Meeting” also means any such assemblage through the use of video or teleconference devices.

b. Notice.

No notice need be given if the time and place of meeting is specifically prescribed by statute. § 25-41-13. If there is no statutory provision, the public body is to state in its minutes the times and places and procedures by which its meetings are to be held. Legislative committee meeting times are announced during the session by loudspeaker or bulletin board, and at other times are kept by the clerk. § 25-41-13(3) and (4).

(1). Time limit for giving notice.

Any recess meeting, adjourned meeting, interim meeting or any called special meeting shall be posted within one (1) hour after such meeting is called.

(2). To whom notice is given.

If notice is required per the statute, then notice must be to “the general public.” § 25-41-13.

(3). Where posted.

If notice is required due to a recess meeting, adjourned meeting, interim meeting or any called special meeting, then notice must be posted “in a prominent place available to examination and inspection by the general public in the building in which the public body normally meets.” § 25-41-13(1).

(4). Public agenda items required.

If an agenda is distributed to the members of the public body, then it must be available for public access at the time of the meeting. § 25-41-5(4).

(5). Other information required in notice.

None.

(6). Penalties and remedies for failure to give adequate notice.

If there is a willful and knowing violation of this provision, then the Mississippi Ethics Commission may impose a civil penalty upon the individual members of the public body that violated the Law. § 25-41-15 (new statute effective July 1, 2011)

c. Minutes.

(1). Information required.

Must show “the members present and absent; the date, time and place of the meeting; an accurate recording of any final actions taken at such meeting; and a record, by individual member, of any votes taken; and any other information that the public body request be included or reflected in the minutes.” § 25-41-11. See Op. Att’y Gen. Nov. 27, 1989 to Guy T. Gillespie, III.

(2). Are minutes public record?

Minutes must be recorded within 30 days and are a public record. § 25-41-11; Op. Att’y Gen. July 16, 1986 to Bennie G. Thompson.

Draft minutes are also a public record, and must be made available within 14 working days after a request is made. Op. Att’y Gen. Aug. 22, 1983 to Mike Davis; Op. Att’y Gen. Jan. 2, 1986 to Charles S. Tindall III.

2. Special or emergency meetings.

a. Definition.

No statutory definition.

b. Notice requirements.

Notice “of the place, date, hour and subject matter of any recess meeting, adjourned meeting, interim meeting or any special meeting shall be posted within one (1) hour after such meeting is called in a prominent place available to examination and inspection by the general public in the building in which the public body normally meets.” § 25-41-13(1). Notice given must be “reasonably calculated to insure that a person could find out that a regular, recessed, interim or special called meeting is scheduled and where and when it will occur.” Op. Att’y Gen. March 23, 1983 to E. Foley Ransom. *See* Op. Att’y Gen. December 18, 1989 to John R. Tabb (notice provision applied to special meetings of the Miss. State Highway Commission). By special statute, notice of all special or adjourned meetings of a board of supervisors must be posted at the courthouse door or published in the newspaper five days before the meeting. § 19-3-19; Op. Att’y Gen. Aug. 24, 1989 to Ruma Hague (notice need not list every party that may be affected in deliberations). Op. Att’y Gen. Dec. 29, 1986 to Joe B. Moss.

(1). Time limit for giving notice.

Within one hour after such meeting is called. § 25-41-13.

(2). To whom notice is given.

The “general public.” § 25-41-13.

(3). Where posted.

“[I]n the building in which the public body normally meets.” § 25-41-13.

(4). Public agenda items required.

If the board is given an agenda, then yes. § 25-41-5(4).

(5). Other information required in notice.

None.

(6). Penalties and remedies for failure to give adequate notice.

If there is a willful and knowing violation of this provision, then the Mississippi Ethics Commission may impose a civil penalty upon the individual members of the public body that violated the Law. § 25-41-15 (new statute effective July 1, 2011).

c. Minutes.

(1). Information required.

Must show “the members present and absent; the date, time and place of the meeting; an accurate recording of any final actions taken at such meeting; and a record, by individual member, of any votes taken; and any other information that the public body request be included or reflected in the minutes.” § 25-41-11. *See* Op. Att’y Gen. November 27, 1989 to Guy T. Gillespie, III.

(2). Are minutes a public record?

Minutes must be recorded within 30 days and are a public record. § 25-41-11; Op. Att’y Gen. July 16, 1986 to Bennie G. Thompson. Draft minutes are also a public record, and must be made available within 14 working days after a request is made. Op. Att’y Gen. Aug. 22, 1983 to Mike Davis; Op. Att’y Gen. Jan. 2, 1986 to Charles S. Tindall III.

3. Closed meetings or executive sessions.

a. Definition.

No statutory definition.

b. Notice requirements.

Notice must be given as for other meetings. The meeting must begin as an open meeting and must be closed by a three-fifths vote. § 25-41-7(1). Op. Att’y Gen. June 13, 1990 to Freddie Love (application of § 25-41-7 to a meeting of a mayor and city aldermen).

(1). Time limit for giving notice.

Same as for other meetings.

(2). To whom notice is given.

Same as for other meetings.

(3). Where posted.

Same as for other meetings.

(4). Public agenda items required.

Same as for other meetings.

(5). Other information required in notice.

Same as for other meetings.

(6). Penalties and remedies for failure to give adequate notice.

Same as for other meetings.

c. Minutes.

(1). Information required.

Must show “the members present and absent; the date, time and place of the meeting; an accurate recording of any final actions taken at such meeting; and a record, by individual member, of any votes taken; and any other information that the public body request be included or reflected in the minutes.” § 25-41-11. *See* Op. Att’y Gen. Nov. 27, 1989 to Guy T. Gillespie, III.

(2). Are minutes a public record?

Minutes must be recorded within 30 days and are a public record. § 25-41-11; Op. Att’y Gen. July 16, 1986 to Bennie G. Thompson. Draft minutes are also a public record, and must be made available within 14 working days after a request is made. Op. Att’y Gen. Aug. 22, 1983 to Mike Davis; Op. Att’y Gen. Jan. 2, 1986 to Charles S. Tindall III.

d. Requirement to meet in public before closing meeting.

Meeting must begin as an open meeting. § 25-41-7. The subsequent procedures are as follows:

(1) A member must make motion in open meeting for the meeting to be closed to determine whether or not the board should declare an executive session. The vote on this motion is taken in an open meeting. If a majority votes to close the meeting to make a determination on the question of an executive session, the meeting is closed for this purpose. § 25-41-7(2).

(2) No other business during this closed interim shall be considered until a vote has been taken on whether or not to declare an executive session, § 25-41-7(2). In order to go into executive session, a majority of three-fifths of those present must vote in favor of it. § 25-41-7(1).

(3) The Board must then state in open meeting the reason for going into executive session, and this reason and total vote on that question must be recorded on the minutes of the meeting. § 25-41-7(3), (5).

(4) The vote to go into executive session is applicable only to that particular meeting on that particular day. § 25-41-7(6).

(5) Action on the stated subject matter of the executive session may be taken during executive session, but the action must be recorded in the minutes. Op. Att’y Gen. Dec. 6, 1989 to Paul B. Henderson.

Matters discussed in executive session must be limited to matters disclosed to the public as exempted from the open meeting. Att’y Gen. Op. 2007-00639 (Dec. 7, 2007).

e. Requirement to state statutory authority for closing meetings before closure.

The reason for holding an executive session shall be stated in an open meeting and shall be recorded in the minutes, § 25-41-7(3); Op. Att’y Gen. June 13, 1990 to Freddie Lover. The reason given must be stated “with sufficient specificity to inform those present that there is in reality a specific, discrete matter or area which the board had determined should be discussed in executive session.” *Hinds Co. Bd. of Supervisors, supra*, 551 So. 2d 111. The discussion of “litigation” is not a sufficient reason. *Id. See also* Op. Att’y Gen. Aug. 22, 1991 to Diane Stewart. (“To simply say ‘personnel matters,’ or ‘litigation’ tells nothing.”). Nothing in the statute governing executive session allows for the exclusion of a member of the public body, even if that member has sued the public body. Att’y Gen. Op. 2006-00127 (May 19, 2006). Officials who discuss matters not exempt during an otherwise properly called executive session violate the Act. Miss. Ethics Commission Op. M-10-016 (January 7, 2011).

f. Tape recording requirements.

None.

F. Recording/broadcast of meetings.

1. Sound recordings allowed.

The public body may “make and enforce reasonable rules and regulations for the conduct of persons attending its meetings.” § 25-41-9. Tape recording must be allowed so long as it does not interfere with the orderly conduct of the meeting. Op. Att’y Gen. Sept. 18, 1985 to Stanford Young. *See also* Op. Att’y Gen. Nov. 20, 1991 to Leslie Scott (“creating a rule which expressly prohibits all sound equipment is not reasonable. The commission could only bar sound equipment in the hearing if the equipment seriously disrupts the orderly flow of the meeting”). *See also* Op. Att’y Gen. Sept. 6, 1990 to Henry L. Lackey (“whether television and radio coverage disrupts a meeting are questions of fact to be determined by public officials charged with the responsibility to enforce reasonable rules and regulations for the conduct of persons attending open meetings”); Op. Att’y Gen. May 3, 1990 to Fred Garrett.

2. Photographic recordings allowed.

Not addressed in Act.

G. Are there sanctions for noncompliance?

The Mississippi Legislature adopted a new law in 2011, which takes effect July 1, 2011, allowing for penalties to be assessed against individual members of the public body found to have violated the Open Meetings Law. Per the statute, “If the Ethics Commission finds that a member or members of a public body has willfully and knowingly violated the provisions” of the statute, “the Ethics Commission may impose a civil penalty upon the individual members of the public body found to be in violation” up to \$500 for a first offense, and up to \$1,000 for a second and subsequent offenses, plus all reasonable costs incurred by the person or persons in bringing the complaint.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

1. Character of exemptions.

a. General or specific.

Exemptions are specific, and exclusive. *Bd. of Trs. v. Miss. Publishers Corp.*, 478 So. 2d 269, 277 (Miss. 1985).

b. Mandatory or discretionary closure.

Exemptions are not mandatory. They are discretionary. § 25-41-7(3).

2. Description of each exemption.

a. “Transaction of business and discussion of personnel matters relating to the job performance, character, professional competence, or physical or mental health of a person holding a specific position.” § 25-41-7(4)(a). This exemption includes the transaction of business and discussions regarding “employment or job performance of a specific person in a specific position or termination of an employee holding a specific position,” including discussion “concerning a line item in a budget which might affect the termination of an employee or employees” but not including final budgetary approval. § 25-41-7(k). The Legislature adopted these definitions in 1990 to reject the suggestion in *Hinds County Board of Supervisors v. Common Cause*, 551 So. 2d 107, 113 (Miss. 1989) that “personnel matters” could include a “large area of subject matter” such as an “increase in life insurance” and the even broader views stated by the trial court. A “personnel matter” must relate to an employee “holding a specific position.” Discussion of matters affecting employees generally are not exempt. Also not exempt are discussions concerning other state officials, the employees of other agencies, or independent contractors such as architects. *Id.* at 124-35. *See also* Note, *The Personnel Matters Exception to the Mississippi Open Meetings Act — A Cloud Over the Sunshine Law*, 7 Miss. Coll. L. Rev. 181 (1987). Members of the Public Employees’ Retirement System may request closure of hearings regarding a member’s mental or physical incapacitation for the future performance of duty. § 25-11-113(1) (c).

b. “Strategy sessions or negotiations with respect to prospective litigation, litigation or issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the public body.” § 25-41-7(4)(b). Att’y Gen. Op. 2006-00127 (May 19, 2006). A public body can invoke this exception and close a meeting concerning city annexation, even when no attorney is present. The phrase “prospective litigation” “connotes litigation reasonably likely to occur in the reasonably foreseeable future,” not “imminent” litigation. *Major and Aldermen v. Vicksburg Printing & Pub. Co.*, 434 So. 2d 1339-40 (Miss. 1983); Op. Att’y Gen. May 1, 1987 to John R. Drennan.

c. “Transaction of business and discussion regarding the report, development or course of action regarding security personnel, plans or devices.” § 25-41-7(4)(c).

d. “Investigative proceedings by any public body regarding allegations of misconduct or violation of law.” § 25-41-7(4)(d).

e. “Any body of the Legislature which is meeting on matters within the jurisdiction of such body.” § 25-41-7(4)(e).

f. “Cases of extraordinary emergency which would pose immediate or irrevocable harm or damage to persons and/or property within the jurisdiction of such public body.” § 25-41-7(4)(f). This exemption was interpreted to allow the State Board of Medical Licensure to hold executive sessions regarding the licensing of abortion doctors. Op. Att’y Gen. Apr. 20, 1995 to P. Doyle Bradshaw.

g. “Transaction of business and discussion regarding the prospective purchase, sale or leasing of lands.” § 25-1-(4)(g).

h. “Discussions between a school board and individual students who attend a school within the jurisdiction of such school board or the parents or teachers of such students regarding problems of such students or their parents or teachers.” § 25-41-7(4) (h).

i. “Transaction of business and discussion concerning the preparation of tests for admission to practice in recognized professions.” § 25-41-7(4)(i). A 1988 statute purports also to exempt meetings of the Mississippi Advisory Council in Occupational Therapy “upon request of an applicant who fails an examination, to prepare a response indicating any reason for his or her failure.” § 73-24-11.

j. “Transaction of business and discussions or negotiations regarding the location, relocation or expansion of a business or an industry.” § 25-41-7(4)(j).

B. Any other statutory requirements for closed or open meetings.

1. “[A]ll courts shall be open. . .” Miss. Const. of 1890, art. 3, § 24. Despite this language, the closure of pretrial proceedings in a murder case was upheld in *Mississippi Publishers Corp. v. Coleman*, 515 So. 2d 1163 (1987).

2. “In all criminal prosecutions the accused shall have a right to a speedy and public trial. Miss. Const. of 1890, art. 3, § 26.

3. The legislature may close its doors “in cases which may require secrecy.” Miss. Const. of 1890, art. 4, § 58; *see also* § 25-41-7(4)(e).

4. Meetings in public schools must be “public meetings,” § 37-7-301(k); Op. Att’y Gen. Jan. 20, 1983 to Will A. Hickman.

5. Insurers who wish to challenge actions by the insurance commissioner are given the right to a confidential hearing in certain instances. 1996 Miss. Laws ch. 478.

C. Court mandated opening, closing.

1. “In prosecutions for rape, adultery, fornication, sodomy or the crime against nature the court may, in its discretion, exclude from the courtroom all persons except such as are necessary in the conduct of the trial.” Miss. Const. of 1890 art. 3, § 26. In *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 608 n.22 (1982), the United States Supreme Court expressly reserved the question of whether this clause is constitutional under the First Amendment.

2. “The general public shall be excluded [from Youth Court hearings and only those persons who are found by the youth court to have a direct interest in the cause or work of the youth court. Any person found by the youth court to have a direct interest in the cause shall have the right to appear and be represented by legal counsel.” § 43-21-203.

3. On closure of court proceedings generally in Mississippi, *see In re Gannett River States Publ’g Corp.*, 630 So. 2d 351 (Miss. 1994); *Gannett River States Publishing Co. v. Hand*, 571 So. 2d 941 (Miss. 1990); *Miss. Publishers Corp. v. Coleman*, 515 So. 2d 1163 (Miss. 1987).

III. MEETING CATEGORIES -- OPEN OR CLOSED.

A. Adjudications by administrative bodies.

No express exemption, but the litigation exemption might apply to deliberations. *See* § 25-41-7(4)(b). *See also* Att’y Gen. Op. (Oct. 16, 1989) (“This office is of the opinion the Act does not exclude records made as they relate to pre-decisional and deliberative matters except to the extent that they may be otherwise expressly protected by the law”).

1. Deliberations closed, but not fact-finding.

N/A

2. Only certain adjudications closed, i.e. under certain statutes.

N/A

B. Budget sessions.

Open, except for personnel matters. *See* § 25-41-7(4)(a).

C. Business and industry relations.

Sometimes exempt. Meetings involving the “[transaction of business and discussions or negotiations regarding the location, relocation or expansion of a business or an industry]” may be closed. *See* § 25-41-7(4)(j).

D. Federal programs.

No specific exemption.

E. Financial data of public bodies.

No specific exemption.

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

No specific exemption.

G. Gifts, trusts and honorary degrees.

No exemption.

H. Grand jury testimony by public employees.

Grand jury proceedings may not be disclosed by grand jurors for at least six months after the final adjournment of the grand jury. § 13-5-61.

I. Licensing examinations.

Exempt. *See* § 25-41-7(4)(i).

J. Litigation; pending litigation or other attorney-client privileges.

Generally exempt. *See* § 25-41-7(4)(b).

K. Negotiations and collective bargaining of public employees.

No specific exemption.

1. Any sessions regarding collective bargaining.

N/A

2. Only those between the public employees and the public body.

N/A

L. Parole board meetings, or meetings involving parole board decisions.

Not covered by the Act. § 25-41-3(a).

M. Patients; discussions on individual patients.

Hospitals are not covered by the Act. § 25-41-3(a).

N. Personnel matters.

Exempt. *See* § 25-41-7(4)(a).

1. Interviews for public employment.

Exempt. *See* § 25-41-7(4)(a).

2. Disciplinary matters, performance or ethics of public employees.

Exempt. *See* § 25-41-7(4)(a).

3. Dismissal; considering dismissal of public employees.

Exempt. *See* § 25-41-7(4)(a).

O. Real estate negotiations.

Exempt. *See* § 25-41-7(4)(g).

P. Security, national and/or state, of buildings, personnel or other.

Exempt. *See* § 25-41-7(4)(c).

Q. Students; discussions on individual students.

Exempt if before the school board. *See* § 25-41-7(4)(h).

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

A. When to challenge.

1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

No.

2. When barred from attending.

Party seeking immediate relief should do so as quickly as possible after public body has refused access, or indicated it will refuse access.

3. To set aside decision.

Courts will not reverse action taken in meeting closed in violation of the Act. *Shipman v. North Panola Consolidated School District*, 641 So. 2d 1106, 1116 (Miss. 1994).

4. For ruling on future meetings.

No provision.

5. Other.

None.

B. How to start.

1. Where to ask for ruling.

a. Administrative forum.

(1). Agency procedure for challenge.

Generally, a member of the public should seek access to a meeting and be turned away before filing a complaint with the Mississippi Ethics Commission or with the chancery court. It is a good idea to question members of the public body concerning what went on in executive session. If they will respond, this can be a way of establishing the public body wrongfully considered non-exempt matters in executive session. There is no official administrative procedure for challenging closed meetings.

(2). Commission or independent agency.

None.

b. State attorney general.

Only public officials can request formal opinions from the attorney general.

c. Court.

The Mississippi Ethics Commission has the authority to enforce provisions of the Open Meetings Law. § 25-41-15. An appeal of the Ethics Commission determination may be made to the chancery court of the county in which the public body is located. A suit to challenge a denial of access may also be filed in chancery court.

2. Applicable time limits.

None.

3. Contents of request for ruling.

No requirement.

4. How long should you wait for a response?

After filing a Complaint with the Ethics Commission, a response from the public body should be received within fourteen days. § 25-41-15. For matters filed in chancery court, this is not addressed.

5. Are subsequent or concurrent measures (formal or informal) available?

An appeal may be made to the chancery court of the county in which the public body is located. § 25-41-15.

C. Court review of administrative decision.

1. Who may sue?

“[A]ny citizen of the state” may sue. § 25-41-15.

2. Will the court give priority to the pleading?

There is no provision in the Act that would make these cases preference cases.

3. Pro se possibility, advisability.

A court is unlikely to take a *pro se* complaint seriously.

4. What issues will the court address?

a. Open the meeting.

The Ethics Commission may order the public body to take whatever reasonable measures are necessary to comply with the Act. On appeal, a chancery court may issue injunctive relief to enforce the Act. § 25-41-15. Similarly, for an action first filed in chancery court, the court may issue injunctive relief.

b. Invalidate the decision.

A violation of the Open Meetings Act does not make the decision void or voidable. *Shipman v. North Panola Consolidated School District*, 641 So. 2d 1106, 1116 (Miss. 1994).

c. Order future meetings open.

The courts have, for example, issued injunctive relief requiring the Board of Institution of Higher Learning to hold open meetings with college presidents. *Board of Trustees, supra*, 478 So. 2d at 278.

5. Pleading format.

Pleading format is governed by the Mississippi Rules of Civil Procedure. No format is specified in the statute for complaints to the Ethics Commission.

6. Time limit for filing suit.

None other than general three-year statute of limitations, § 15-1-49. As a practical matter, suits seeking extraordinary relief such as an injunction should be brought as soon as possible after the Act is violated.

7. What court.

Under the new statute, a complaint may first be filed with the Mississippi Ethics Commission, and from that decision, an appeal may be taken to the chancery court. Filing with the Ethics Commission appears to be optional. A complaint may also be first filed with the chancery court, although it is possible, with the adoption of the new statute in 2011, that a chancery court may dismiss a complaint that did not first go through the Ethics Commission.

8. Judicial remedies available.

The Ethics Commission may order the public body to comply with the Act, and may impose civil penalties, as discussed above. § 25-41-15. In chancery court, remedies may include injunctive relief or writs of mandamus.

9. Availability of court costs and attorneys' fees.

Yes, the statute allows for the recovery of “all reasonable expenses incurred by the person or persons in bringing the complaint.” § 25-41-15.

10. Fines.

Yes. As discussed above, individual members found to have willfully or knowingly violated the Act may be fined \$500 for a first offense, and \$1,000 for subsequent offenses.

11. Other penalties.

No additional penalties are specified in the statute. In chancery court, however, if a plaintiff obtains a consent decree, violation of the

decree is civil contempt and a plaintiff establishing civil contempt is entitled to recover his or her attorney's fees. *Hinds Co. Bd. of Supervisors v. Common Cause*, 551 So. 2d 107, 125 (Miss. 1989). A party who fails to prove criminal contempt cannot appeal the judgment because to do so would place the defendant in double jeopardy. *Common Cause v. Smith*, 548 So. 2d 412 (Miss. 1989).

D. Appealing initial court decisions.

1. Appeal routes.

Appeal from the Ethics Commission's decision is to the chancery court. § 25-41-14. Appeal from the chancery court is to the Mississippi Supreme Court which may refer the case to the Court of Appeals.

2. Time limits for filing appeals.

Generally 30 days. *See* Miss. Sup. Ct. R. 4.

3. Contact of interested amici.

The Society of Professional Journalists, Sigma Delta Chi, P. O. Box 1024, Jackson, MS 39215, has filed an *amicus* brief in a Mississippi Open Meetings Act case in the past. Other interested organizations are listed in the records outline above.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

V. ASSERTING A RIGHT TO COMMENT.

A. Is there a right to participate in public meetings?

A citizen spectator or news reporter is not a participant and cannot interfere with discussion, deliberation or decision-making process. *Hinds Co. Bd. of Supervisors v. Common Cause*, 551 So. 2d 107, 110 (Miss. 1989). But see *Board of Trustees of State Institutions of Higher Learning v. Mississippi Publishers Corp.*, 478 So. 2d 269, 276 (Miss. 1985). However, where an ad valorem tax increase is proposed, citizens are afforded "reasonable amount of time" to speak. § 27-39-205.

B. Must a commenter give notice of intentions to comment?

Public body may make rules and regulations regarding those attending public meeting. § 25-41-9.

C. Can a public body limit comment?

Public body may enact rules and regulations regarding those attending public meeting. § 25-41-9.

D. How can a participant assert rights to comment?

Public body may enact rules and regulations regarding those attending public meeting. § 25-41-9.

E. Are there sanctions for unapproved comment?

Public body may enact rules and regulations regarding those attending public meeting. § 25-41-9.

Statute

Open Records

Mississippi Code

Title 25. Public Officers and Employees; Public Records

Chapter 61. Public Access to Public Records

§ 25-61-1. Short title

This chapter shall be known and may be cited as the "Mississippi Public Records Act of 1983." It is the policy of the Legislature that public records must be available for inspection by any person unless otherwise provided by this act [Laws 1996, Ch. 453]. Furthermore, providing access to public records is a duty of each public body and automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic record keeping, each agency must ensure reasonable access to records electronically maintained, subject to the rules of records retention.

§ 25-61-2. Policy

It is the policy of this state that public records shall be available for inspection by any person unless otherwise provided by this chapter; furthermore, providing access to public records is a duty of each public body and automation of public records must not erode the right of access to those records. As each public body increases its use of, and dependence on, electronic record keeping, each public body must ensure reasonable access to records electronically maintained, subject to records retention.

§ 25-61-3. Definitions

The following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Public body" shall mean any department, bureau, division, council, commission, committee, subcommittee, board, agency and any other entity of the state or a political subdivision thereof, and any municipal corporation and any other entity created by the Constitution or by law, executive order, ordinance or resolution. Within the meaning of this chapter, the term "entity" shall not be construed to include individuals employed by a public body or any appointed or elected public official.

(b) "Public records" shall mean all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, 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, or required to be maintained by any public body.

(c) "Data processing software" means the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications and computer networking programs.

(d) "Proprietary software" means data processing software that is obtained under a licensing agreement and is protected by copyright or trade secret laws.

§ 25-61-5. Public access to records; denials

(1)(a) Except as otherwise provided by Sections 25-61-9 and 25-61-11, all public records are hereby declared to be public property, and any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of a public body in accordance with reasonable written procedures adopted by the public body concerning the cost, time, place and method of access, and public notice of the procedures shall be given by the public body, or, if a public body has not adopted written procedures, the right to inspect, copy or mechanically reproduce or obtain a reproduction of a public record of the public body shall be provided within one (1) working day after a written request for a public record is made. No public body shall adopt proce-

dures which will authorize the public body to produce or deny production of a public record later than seven (7) working days from the date of the receipt of the request for the production of the record.

(b) If a public body is unable to produce a public record by the seventh working day after the request is made, the public body must provide a written explanation to the person making the request stating that the record requested will be produced and specifying with particularity why the records cannot be produced within the seven-day period. Unless there is mutual agreement of the parties, in no event shall the date for the public body's production of the requested records be any later than fourteen (14) working days from the receipt by the public body of the original request.

(2) If any public record contains material which is not exempted under this chapter, the public agency shall redact the exempted and make the nonexempted material available for examination. Such public agency shall be entitled to charge a reasonable fee for the redaction of any exempted material, not to exceed the agency's actual cost.

(3) Denial by a public body of a request for access to or copies of public records under this chapter shall be in writing and shall contain a statement of the specific exemption relied upon by the public body for the denial. Each public body shall maintain a file of all denials of requests for public records. Public bodies shall be required to preserve such denials on file for not less than three (3) years from the date such denials are made. This file shall be made available for inspection or copying or both during regular office hours to any person upon written request.

§ 25-61-7. Fees incident to providing records

(1) Except as provided in subsection (2) of this section, each public body may establish and collect fees reasonably calculated to reimburse it for, and in no case to exceed, the actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records. Such fees shall be collected by the public body in advance of complying with the request.

(2) A public body may establish a standard fee scale to reimburse it for the costs of creating, acquiring and maintaining a geographic information system or multipurpose cadastre as authorized and defined under Section 25-61-1 et seq., or any other electronically accessible data. Such fees must be reasonably related to the cost of creating, acquiring and maintaining the geographic information system, multipurpose cadastre or other electronically accessible data, for the data or information contained therein or taken therefrom and for any records, papers, accounts, maps, photographs, films, cards, tapes, recordings or other materials, data or information relating thereto, whether in printed, digital or other format. In determining the fees or charges under this subsection, the public body may consider the type of information requested, the purpose or purposes for which the information has been requested and the commercial value of the information.

§ 25-61-9. Records furnished by third parties

(1) Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction under this chapter until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential.

(2) If any public record which is held to be exempt from disclosure pursuant to this chapter contains material which is not exempt pursuant to this chapter, the public body shall separate the exempt material and make the nonexempt material available for examination and/or copying as provided for in this chapter.

(3) Trade secrets and confidential commercial and financial information of a proprietary nature developed by a college or university under contract with a firm, business, partnership, association, corporation, individual or other like entity shall not be subject to inspection, examination, copying or reproduction under this chapter.

(4) Misappropriation of a trade secret shall be governed by the provisions of the Mississippi Uniform Trade Secrets Act, Sections 75-26-1 through 75-26-19.

(5) A waste minimization plan and any updates developed by generators and facility operators under the Mississippi Comprehensive Multimedia Waste Minimization Act of 1990 shall be retained at the facility and shall not be subject to inspection, examination, copying or reproduction under this chapter.

(6) Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in Section 75-26-3, and data processing software produced by a public body which is sensitive must not be subject to inspection, copying or reproduction under this chapter.

As used in this subsection, "sensitive" means only those portions of data processing software, including the specifications and documentation, used to:

(a) Collect, process, store, and retrieve information which is exempt under this chapter.

(b) Control and direct access authorizations and security measures for automated systems.

(c) Collect, process, store, and retrieve information, disclosure of which would require a significant intrusion into the business of the public body.

§ 25-61-10. Use of sensitive software

(1) Any public body that uses sensitive software, as defined in Section 25-61-9, or proprietary software must not thereby diminish the right of the public to inspect and copy a public record. A public body that uses sensitive software, as defined in Section 25-61-9, or proprietary software to store, manipulate, or retrieve a public record will not be deemed to have diminished the right of the public if it either: (a) If [if] legally obtainable, makes a copy of the software available to the public for application to the public records stored, manipulated, or retrieved by the software; or (b) ensures that the software has the capacity to create an electronic copy of each public record stored, manipulated, or retrieved by the software in some common format such as, but not limited to, the American Standard Code for Information Interchange.

(2) 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.

(3) Before a public body acquires or makes a major modification to any information technology system, equipment, or software used to store, retrieve, or manipulate a public record, the public body shall adequately plan for the provision of public access and redaction of exempt or confidential information by the proposed system, equipment or software.

(4) A public body may not enter into a contract for the creation or maintenance of a public records data base if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are on-line or stored in an information technology system used by the public body.

§ 25-61-11. Exempted or privileged records

The provisions of this chapter shall not be construed to conflict with, amend, repeal or supersede any constitutional or statutory law or decision of a court of this state or the United States which at the time of this chapter is effective or thereafter specifically declares a public record to be confidential or privileged, or provides that a public record shall be exempt from the provisions of this chapter.

§ 25-61-13. Proceedings to compel public access

(1) Any person denied the right granted by section 25-61-5 to inspect and/or copy public records may institute a suit in the chancery court of the county in which the public body is located, and the court shall determine whether such public record is exempt from the provisions of this chapter, and in making such determination the court shall take into consideration any constitutional or statutory law or decision of any court of this state or the United States or any rule of common law. Process shall be served on the proper officials according to law.

(2) In any suit filed under subsection (1) of this section, the court has the authority to prohibit the public body from withholding the public records, to order the production of any public records improperly withheld from the person seeking disclosure, and to grant such other equitable relief as may be proper. The court, on its own motion, may privately view the public records in controversy before reaching a decision.

(3) Proceedings arising under this section shall take precedence on the docket over all other matters and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way. Such suits may be heard in termtime or in vacation.

(4) Any suit filed under this section shall be subject to all the rights and rules of appeal for other suits arising in chancery court.

§ 25-61-15. *Penalty*

Any person who shall willfully and knowingly deny to any person access to any public record which is not exempt from the provisions of this chapter may be liable civilly in a sum not to exceed one hundred dollars (\$100.00) per violation, plus all reasonable expenses incurred by such person bringing the lawsuit.

§ 25-61-17. *Construction*

Nothing in this chapter shall be construed as denying the legislature the right to determine the rules of its own proceedings and to regulate public access to its records.

Open Meetings

Mississippi Code

Title 25. Public Officers and Employees; Public Records

Chapter 41. Open Meetings

§ 25-41-1. *Legislative statement*

It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy, it is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein.

§ 25-41-3. *Definitions*

For purposes of this chapter, the following words shall have the meaning ascribed herein, to wit:

(a) "Public body" means any executive or administrative board, commission, authority, council, department, agency, bureau or any other policy making entity, or committee thereof, of the State of Mississippi, or any political subdivision or municipal corporation of the state, whether such entity be created by statute or executive order, which is supported wholly or in part by public funds or expends public funds, and any standing, interim or special committee of the Mississippi Legislature. There shall be exempted from the provisions of this chapter:

- (i) The judiciary, including all jury deliberations;
- (ii) Public and private hospital staffs, public and private hospital boards and committees thereof;
- (iii) Law enforcement officials;
- (iv) The military;
- (v) The State Probation and Parole Board;
- (vi) The Workers' Compensation Commission;
- (vii) Legislative subcommittees and legislative conference committees;
- (viii) The arbitration council established in Section 69-3-19;
- (ix) License revocation, suspension and disciplinary proceedings held by the Mississippi State Board of Dental Examiners; and
- (x) Hearings and meetings of the State Tax Commission and the hearing officers and the board of review of the State Tax Commission as provided in Section 27-77-15.

(b) "Meeting" means an assemblage of members of a public body at which official acts may be taken upon a matter over which the public body has supervision, control, jurisdiction or advisory power; "meeting" also means any such assemblage through the use of video or teleconference devices.

§ 25-41-5. *Official meetings of public bodies*

(1) All official meetings of any public body, unless otherwise provided in this chapter or in the Constitutions of the United States of America or the State of Mississippi, are declared to be public meetings and shall be open to the public at all times unless declared an executive session as provided in Section 25-41-7.

(2) A public body may conduct any meeting, other than an executive session called pursuant to Section 25-41-7, wherein public business is discussed or transacted, through teleconference or video means. If a quorum of the public body is physically assembled at one (1) location for the purpose of conducting a meeting, additional members of the public body may participate in the meeting through teleconference or video means provided their participation is available to the general public.

(3)

(a) Notice of any meetings held pursuant to subsection (2) of this section shall be provided at least thirty (30) days in advance of the date scheduled for the meeting. The notice shall include the date, time, place and purpose for the meeting and shall identify the locations for the meeting. All locations for the meeting shall be made accessible to the public. All persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary or central location. Any interruption in the teleconference or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

(b) Thirty-day notice shall not be required for teleconference or video meetings continued to address an emergency as provided in subsection (5) of this section or to conclude the agenda of a teleconference or video meeting of the public body for which the proper notice has been given, when the date, time, place and purpose of the continued meeting are set during the meeting prior to adjournment.

(4) An agenda and materials that will be distributed to members of the public body and that have been made available to the staff of the public body in sufficient time for duplication and forwarding to all locations where public access will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings held by teleconference or video means shall be recorded as required by Section 25-41-11. Votes taken during any meeting conducted through teleconference or video means shall be recorded by name in roll-call fashion and included in the minutes. In addition, the public body shall make an audio recording of the meeting, if a teleconference medium is used, or an audio/visual recording, if the meeting is held by video means. The recording shall be preserved by the public body for a period of three (3) years following the date of the meeting and shall be available to the public.

(5) A public body may meet by teleconference or video means as often as needed if an emergency exists and the public body is unable to meet in regular session. Public bodies conducting emergency meetings through teleconference or video means shall comply with the provisions of subsection (4) of this section requiring minutes, recordation and preservation of the audio or audio/visual recording of the meeting. The nature of the emergency shall be stated in the minutes.

§ 25-41-7. *Public body holding executive sessions*

(1) Any public body may enter into executive session for the transaction of public business; provided, however, all meetings of any such public body shall commence as an open meeting, and an affirmative vote of three-fifths (3/5) of all members present shall be required to declare an executive session.

(2) The procedure to be followed by any public body in declaring an executive session shall be as follows: Any member shall have the right to request by motion a closed determination upon the issue of whether or not to declare an executive session. Such motion, by majority vote, shall require the meeting to be closed for a preliminary determination of the necessity for executive session. No other business shall be transacted until the discussion of the nature of the matter requiring executive session has been completed and a vote, as required in subsection (1) hereof, has been taken on the issue.

(3) An executive session shall be limited to matters allowed to be exempted from open meetings by subsection (4) of this section. The reason for holding such an executive session shall be stated in an open meeting, and the reason so stated shall be recorded in the minutes of the meeting. Nothing in this section shall be construed to require that any meeting be closed to the public, nor shall any executive session be used to circumvent or to defeat the purposes of this chapter.

(4) A public body may hold an executive session pursuant to this section for one or more of the following reasons:

(a) Transaction of business and discussion of personnel matters relating to the job performance, character, professional competence, or physical or mental health of a person holding a specific position.

(b) Strategy sessions or negotiations with respect to prospective litigation, litigation or issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the public body.

(c) Transaction of business and discussion regarding the report, development or course of action regarding security personnel, plans or devices.

(d) Investigative proceedings by any public body regarding allegations of misconduct or violation of law.

(e) Any body of the Legislature which is meeting on matters within the jurisdiction of such body.

(f) Cases of extraordinary emergency which would pose immediate or irrevocable harm or damage to persons and/or property within the jurisdiction of such public body.

(g) Transaction of business and discussion regarding the prospective purchase, sale or leasing of lands.

(h) Discussions between a school board and individual students who attend a school within the jurisdiction of such school board or the parents or teachers of such students regarding problems of such students or their parents or teachers.

(i) Transaction of business and discussion concerning the preparation of tests for admission to practice in recognized professions.

(j) Transaction of business and discussions or negotiations regarding the location, relocation or expansion of a business or an industry.

(k) Transaction of business and discussions regarding employment or job performance of a person in a specific position or termination of an employee holding a specific position. The exemption provided by this paragraph includes the right to enter into executive session concerning a line item in a budget which might affect the termination of an employee or employees. All other budget items shall be considered in open meetings and final budgetary adoption shall not be taken in executive session.

(5) The total vote on the question of entering into an executive session shall be recorded and spread upon the minutes of such public body.

(6) Any such vote whereby an executive session is declared shall be applicable only to that particular meeting on that particular day.

§ 25-41-9. Rules and regulations for meetings

Any public body may make and enforce reasonable rules and regulations for the conduct of persons attending its meetings.

§ 25-41-11. Minutes of meetings

(1) Minutes shall be kept of all meetings of a public body, whether in open or executive session, showing the members present and absent; the date, time and place of the meeting; an accurate recording of any final actions taken at such meeting; and a record, by individual member, of any votes taken; and any other information that the public body requests be included or reflected in the minutes. The minutes shall be recorded within a reasonable time not to exceed thirty (30) days after recess or adjournment and shall be open to public inspection during regular business hours.

(2) Minutes of a meeting conducted by teleconference or video means shall comply with the requirements of Section 25-41-5.

(3) Minutes of legislative committee meetings shall consist of a written record of attendance and final actions taken at such meetings.

§ 25-41-13. Notice

(1) Any public body which holds its meetings at such times and places and by such procedures as are specifically prescribed by statute shall continue to do so and no additional notice of such meetings shall be required except that a notice of the place, date, hour and subject matter of any recess meeting, adjourned meeting, interim meeting or any called special meeting shall be posted within one (1) hour after such meeting is called in a prominent place available to examination and inspection by the general public in the building in which the public body normally meets. A copy of the notice shall be made a part of the minutes or other permanent official records of the public body.

(2) Any public body, other than a legislative committee, which does not have statutory provisions prescribing the times and places and the procedures by which its meetings are to be held shall, at its first regular or special meeting after July 1, 1990 spread upon its minutes the times and places and the procedures by which all of its meetings are to be held.

(3) During a regular or special session of the Mississippi Legislature, notice of meetings of all committees, other than conference committees, shall be given by announcement on the loudspeaker during sessions of the House of Representatives or Senate or by posting on a bulletin board provided for that purpose by each body.

(4) When not in session, the meeting times and places of all committees shall be kept by the Clerk of the House of Representatives as to House committees and by the Secretary of the Senate as to Senate committees, and shall be available at all times during regular working hours to the public and news media.

§ 25-41-15. Enforcement of chapter; civil penalty

25-41-15 (effective July 11, 2011). The Mississippi Ethics Commission shall have the authority to enforce the provisions of this chapter upon a complaint filed by any person. Upon receiving a complaint, the commission shall forward a copy of the complaint to the head of the public body involved. The public body shall have fourteen (14) days from receipt of the complaint to file a response with the commission. After receiving the response to the complaint or, if no response is received after fourteen (14) days, the commission, in its discretion, may dismiss the complaint or proceed by setting a hearing in accordance with rules and regulations promulgated by the Ethics Commission.

After a hearing, the Ethics Commission may order the public body to take whatever reasonable measures necessary, if any, to comply with this chapter. If the Ethics Commission finds that a member or members of a public body has willfully and knowingly violated the provisions of this chapter, the Ethics Commission may impose a civil penalty upon the individual members of the public body found to be in violation of the provision of this chapter in a sum not to exceed Five Hundred Dollars (\$500.00) for a first offense and One Thousand Dollars (\$1,000.00) for a second or subsequent offense, plus all reasonable expenses incurred by the person or persons in bringing the complaint to enforce this chapter.

Nothing in this chapter shall be construed to prohibit the Ethics Commission from mediating or otherwise resolving disputes arising under this chapter or from entering orders agreed to by the parties. In carrying out its responsibilities under this section, the Ethics Commission shall have all the powers and authority granted to it in Title 25, Chapter 4, Mississippi Code of 1972.

Any party may petition the chancery court of the county in which the public body is located to enforce or appeal any order of the Ethics Commission issued pursuant to this chapter. In any such appeal the chancery court shall conduct a de novo review.

§ 25-41-17. Chance meetings, social gatherings excluded

The provisions of this chapter shall not apply to chance meetings or social gatherings of members of a public body.

