

BEFORE THE MISSISSIPPI ETHICS COMMISSION

LORI ENDO-ESCONDON

COMPLAINANT

VS.

PUBLIC RECORDS CASE NO. R-22-020

LEE COUNTY TAX COLLECTOR

RESPONDENT

FINAL ORDER

This matter came before the Mississippi Ethics Commission through a Public Records Complaint filed by Lori Endo-Escandon on behalf of the Zillow, Inc. against the Lee County Tax Collector (the “tax collector”). The Ethics Commission has jurisdiction over this matter pursuant to Section 25-61-13, Miss. Code of 1972. The hearing officer presented a Preliminary Report and Recommendation to the Ethics Commission at its regular meeting on December 2, 2022. The respondent did not object to the Preliminary Report and Recommendation and has thereby waived the right to a hearing on the merits. Accordingly, the hearing office enters this Final Order in accordance with Rule 5.6, Rules of the Mississippi Ethics Commission.

I. FINDINGS OF FACT

1.1 On October 21, 2020, Zillow, Inc. acquired the 2021 Tax Assessment file for all parcels in Lee County from Delta Computer Systems, upon authorization from the Lee County Tax Assessor. According to the complaint, the Lee County Tax Assessor advised Zillow “that the ATR Tax File would not be included and that the authorization to acquire the ATR Tax File from Delta must come from the Lee County Tax Collector.” Ms. Endo-Escandon states that Zillow asked for authorization from the former Lee County Tax Collector, LeRoy Belk, Jr., but Mr. Belk did not respond. The complainant attached a copy of correspondence dated December 6, 2021 faxed to the Lee County Tax Collector’s office that stated the following (in pertinent part):

... Under the Mississippi Public Records Act §25-61-1 et seq., I’m looking to obtain the 2021 Tax Roll for Lee County, MS.

I understand the data must be acquired through Delta Computer Systems.

Would you please sign and scan back the attached County Data Release Form?

1.2 The correspondence included an unsigned “Authorization to Release County Data Form” from Delta Computer Systems Inc. to authorize Delta Computer Systems to provide the “2021 Tax Roll-ATR” data files to Zillow, Inc.

1.3 Ms. Endo-Escandon faxed the same correspondence again on January 4, 2022, then emailed the same on March 1, 2022 to Mr. Belk. Having no response, Susan Noto (another employee of Zillow) reached out to the Lee County Tax Office, and followed up with an email dated March 22, 2022 that stated (in pertinent part):

Per my call with your office this morning, attached is the Delta Authorization Form that needs to be completed so we can acquire the 2021 ATR Tax file for Lee County.

If you can sign and email me a copy, I can work with Tim at Delta for the data file.

1.4 Patrice Bazianos, an attorney for Zillow, then emailed the Lee County Tax Collector's Office to state on March 30, 2022 the following (in pertinent part):

My name is Patrice Bazianos, and I am an attorney for Zillow. I have attempted to contact you several times regarding Zillow's outstanding Public Record's Request. Zillow first contacted your office seeking an electronic copy of the 2021 Tax Roll from Lee County in October of last year. Since then, Zillow has made multiple attempts to reach Lee County for status on its request. This includes attempts to reach you by phone and via email (copies of which are attached hereto), all to no avail.

... Zillow is aware that Delta Computer Systems, Inc. maintains the online parcel search site for Lee County as it does for several other counties in Mississippi. As Zillow has done with other Mississippi counties, Zillow offered to work directly with Delta to acquire the Lee County public records and even attached the draft release forms in all its emails to you. There would be no burden on your office to produce the public records.

I would appreciate a response to Zillow's outstanding request. Please either provide guidance as to how Zillow can acquire this public file either from your office directly or from your vendor or provide the statutory authority for your denial. In the alternative, please have your county attorney contact me to discuss this matter further. I welcome the opportunity to discuss and resolve this matter with either you or your attorney.

If I do not hear from you or your attorney by Tuesday of next week, I will deem your silence a denial and will proceed accordingly.

1.5 The Lee County Tax Collector's Office sent an email to Susan Noto on April 1, 2022, stating:

Per the Lee County Tax Collector, once we meet with our county attorney he will determine if we will or will not violate any privacy laws by signing the release. Once he makes this determination we will email you the release form for delta.

1.6 Ms. Endo-Escandon filed this public records complaint on April 20, 2022 and states, "To date, Mr. Belk has not followed up as promised and has not provided the public ATR Tax File or the authorization for Zillow to acquire the ATR Tax File." The complaint states that "the public records Zillow is seeking here are records collected and maintained by the County Tax Collector's Office as part of the office's responsibility to collect taxes on real estate and personal property located within the county." The complainant alleges that the Lee County Tax Collector has violated the Public Records Act by refusing to sign the authorization form, and requests the

Ethics Commission to “order the Lee County Tax Collector to sign the Data Release Form and to impose any fees, costs and/or penalties it deems just and appropriate.”

1.7 In response, the Lee County Tax Collector states (in pertinent part):

...[The Tax Collector’s] statutory office does not complete the assessments of real and personal property nor does he complete the tax rolls in this county. The County has a third-party contractor which receives the required information and the Tax Collector has a tax link to the third party for payment of taxes. The creation of the tax rolls is not a function of his office and therefore the information requested by the Complainant would need to be obtained from another office in this county.

It would be extremely time intensive and expensive for the Lee County Tax Collector to try to obtain an entire tax roll for Lee County. Mr. Belk prays that if this Commission does order that he obtain the entire tax roll of Lee County, Mississippi, that all expenses be taxed to the Complainant and that the Complainant provide a “hold harmless” agreement with the Lee County Tax Collector for any violations of the laws of privacy which results from their request.

1.8 The undersigned hearing officer requested some additional information from the complainant regarding what an “ATR” file is and what kind of information is included on an ATR Tax file. Ms. Endo-Escandon provided a sample ATR data header description file, which shows that the information in this file includes (among other items), the parcel number, owner’s name and address, taxes due, and whether the taxes have been paid. In her email response, Ms. Endo-Escandon also stated, “to clarify, both the vendor and Tax Assessor referred me to the Tax Collector to obtain release of the tax bill amounts” and provided copies of that correspondence. In that correspondence, the Delta computer representative referred to the ATR file as “the tax receipt file.”

II. CONCLUSIONS OF LAW

2.1 The Mississippi Public Records Act of 1983 (the “Act”), codified at Section 25-61-1, et seq., Miss. Code of 1972, provides that public records shall be available for inspection by any person unless otherwise provided by law and places a duty upon public bodies to provide access to such records. Section 25-61-1, 25-61-2 and Section 25-61-5. The Act states that “any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of a public body. . .” Section 25-61-5(1)(a).

2.2 To begin, the “County Data Release Form” that Ms. Endo-Escandon requested that the Lee County Tax Collector sign and send to Zillow is clearly not a public record as defined by the Act. “Public records” are defined as all documents or records “having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body.” Section 25-61-3(b). As such, the Act does not require the tax collector and/or county to sign a release form upon request, nor are they restricted by the Act in establishing and collecting fees for signing a release form. See, Endo-Escandon v. Adams County Tax Assessor,

Public Records Case No. R-21-005 Noto v. Alcorn County Tax Assessor, Public Records Case No. R-20-041.

2.3 Nonetheless, the “2021 Tax Roll-ATR” itself appears to be a public record, which the complainant requested in her December 6, 2021 correspondence. Pursuant to Miss. Code Section 27-3-77, “[r]ecords in the possession of a public body, as defined by paragraph (a) of Section 25-61-3 which would disclose information about a person’s individual tax payment or status, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.” However, the Mississippi Attorney General’s Office has opined that this exemption only applies to income tax records. See, Miss. Att’y Op. No. 2005-0560, Ray (Dec. 16, 2005). Furthermore, in the correspondence between Delta Computer and Zillow, the Delta employee referred to the data as a “tax receipt file.” Pursuant to Miss. Code Section 27-41-39, tax collectors are charged with keeping “in a well-bound cash book kept for the purpose, the date and number of each tax receipt issued by him, the name of the person paying taxes, and the amount paid for each tax account....” Further, “[t]he cash book shall at all times be subject to the inspection of any state or county officer or agent, or any citizen of the state.” *Id.* Accordingly, to the extent that the data is the tax receipt information as described pursuant to Miss. Code Section 27-41-39, such electronic file is a public record, not exempt from the Public Records Act, and the Lee County Tax Collector must provide reasonable access to the public.

2.4 In its response, the tax collector’s office states that its records are maintained by a third-party and that it would be extremely time intensive and expensive to obtain the requested records. While a public body is not required to create a new record in response to a public records request, a public body may be required to provide access to public records over which it has control, even if it does not have physical possession of the documents. See, Mississippi Model Public Records Rules, Comments 3.1(3) and 4.4(4)(a). In this case, to provide access to the requested public records, the Lee County Tax Collector may either retrieve its records from its third-party contractor or authorize Zillow access to these records by signing the release.

2.5 Regardless of which method the tax collector’s office chooses, Section 25-61-7 of the Act allows public bodies to charge fees for providing public records. In this case, because the requested records are held in a geographic information system or multipurpose cadastre, Section 25-61-7(2) of the Act applies. Section 25-61-7(2) does not require the tax collector to limit the fee charged to “actual costs” but allows a public body to establish a fee that is “*reasonably related* to the costs 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.” (Emphasis added.) This section goes on to state that “[i]n 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.” Section 25-61-7(2). That is, when establishing a fee for providing tax assessment land roll data, a public body may consider the cost of creating, acquiring and maintaining the entire system, as well as the purpose for which the information has been requested, and whether the information has commercial value. Accordingly, the Lee County Tax Collector may charge the requestor a fee for either retrieving its records from the third-party contractor or for signing the authorization form.

III. CONCLUSION

WHEREFORE, IT IS HEREBY ORDERED as follows:

3.1 The Ethics Commission finds that the Lee County Tax Collector violated Section 25-61-5 of the Mississippi Public Records Act.

3.2 The Ethics Commission orders the Lee County Tax Collector to provide the complainant with an estimate charging a reasonable fee for retrieving its records from its third-party contractor or for signing the authorization to release the requested records. This action shall occur within seven working days from the receipt of a final order in this case.

3.3 The Ethics Commission orders the Lee County Tax Collector, through its officials and employees, to strictly comply with the Public Records Act, and find that further violations may result in the imposition of additional penalties, including payment of reasonable costs incurred by the person seeking public records.

SO ORDERED, this the 12th day January, 2023.

SONIA SHURDEN, Hearing Officer
Mississippi Ethics Commission