

**BEFORE THE MISSISSIPPI ETHICS COMMISSION**

**JESSICA MORGAN LINDSEY**

**COMPLAINANT**

**VS.**

**PUBLIC RECORDS CASE NO. R-23-007**

**CLAY COUNTY CIRCUIT CLERK**

**RESPONDENT**

**FINAL ORDER**

This matter came before the Mississippi Ethics Commission through a Public Records Complaint filed by Jessica Morgan Lindsay, a reporter with The Commercial Dispatch, against the Clay County Circuit Clerk's office. The Circuit Clerk filed a response by and through her attorneys.

The Ethics Commission has jurisdiction over this matter pursuant to Section 25-61-13, Miss. Code of 1972. A Preliminary Report and Recommendation was issued in this matter of the 1<sup>st</sup> day of March 2024. The parties did not object to the Preliminary Report and Recommendation and have thereby waived a right to a hearing on the merits. Accordingly, this Final Order is entered in accordance with Rule 5.6, Rules of the Mississippi Ethics Commission.

**I. FINDINGS OF FACT**

1.1 Jessica Lindsay, an education reporter with The Commercial Dispatch, alleges the Clay County Circuit Clerk violated the Mississippi Public Records Act by improperly redacting documents responsive to a public records request. Specifically, on February 6, 2023, Ms. Lindsay filed a public records request with the Clay County Circuit Clerk's office for "Clay County election qualifying forms with candidate contact information including phone number, email and address that were filed from Jan. 3, 2023 to Feb. 1, 2023 by 5 p.m. central time."

1.2 On February 9, 2023, Kim Hood, Clay County Circuit Clerk, notified Ms. Lindsay that she was seeking advice from the County Attorney, and provided Ms. Lindsay with a copy of a Mississippi Attorney General's Opinion<sup>1</sup> requested by the then Assistant Secretary of State for Elections, addressing a similar issue. On February 13, 2023, the Circuit Clerk's office, through its attorney, provided copies of the requested documents, redacting email addresses, telephone numbers and mailing addresses.

1.3 Ms. Lindsay argues in her complaint that information was improperly redacted, stating that "we at The Commercial Dispatch believe contact information to be vital to verifying

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<sup>1</sup> Miss. Att'y Gen. Op. 2015-00065, Turner (March 27, 2015). The opinion concluded, "It remains our opinion that generally, and unless authorized or required by statute, information such as addresses, telephone numbers, and other related personal information including dates of birth, social security numbers, and driver's license numbers should not be made public pursuant to a public records request. MS AG Ops., Neyman (January 31, 2014); Smith (July 2, 1984); Stanton (November 7, 2014). With regard to candidate qualifying forms, we are of the opinion that information which is necessary to verify or evaluate the candidate's qualifications, such as a street address (residential address) or date of birth, is not subject to redaction. However, information such as email addresses, telephone numbers, and mailing addresses (post office boxes) should be redacted prior to disclosure."

candidate legitimacy. There are certain offices that require verification of no criminal record, education history, and various other requirements. There have been a few instances in recent elections where [newspaper] staff have needed to speak with a candidate to verify their address and [whether] they have lived within a certain jurisdiction for the required amount of time. When a person declares to run for public office, we believe they give up certain rights to privacy such as phone numbers and email addresses so the public can verify the legitimacy of the candidate.”

1.4 In response, the Circuit Clerk denies violating the Act. The Circuit Clerk states she provided requested public records, properly redacting “the email addresses, telephone numbers and mailing addresses of candidates ... based on the express language of Attorney General Opinion No. 2015-00065.” The Circuit Clerk’s response goes on to state, that “understanding the balance between the public’s interest in disclosure and the privacy interest of candidates, [the Circuit Clerk] went a step further by .... [f]orwarding unaltered copies of [Media Contact Information for 2023 Elections forms] for candidates” which provided email, mailing address and phone numbers of candidates consented to provide contact information to media and vendors.

1.5 Additionally, the Circuit Clerk points out in her response that:

Although it is understood declaring to seek public office diminishes certain privacy rights, the statutory duties of the county executive committees and election commissions, relative to candidate legitimacy (i.e. qualification of candidates, criminal background checks, determining whether there has been misuse or abuse of office or money received, etc.) should not be overlooked. See Sections 23-15-263, and 23-15-359 of Mississippi Code of 1972, as amended. Stated differently, the Mississippi Legislature has not left the responsibility to determine candidate legitimacy to the public. Barring extenuating circumstances, the duties of determining whether a candidate is qualified and can be legally listed on the ballot have been assigned to the county executive committees and elections commissioners.

## II. CONCLUSIONS OF LAW

2.1 The Mississippi Public Records Act of 1983 (the “Act”), codified at Section 25-61-1, et seq., Miss. Code of 1972, provides that public records shall be available for inspection by any person unless otherwise provided by law and places a duty upon public bodies to provide access to such records. Section 25-61-2 and Section 25-61-5. “Public records” are defined as all documents or records “having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body.” Section 25-61-3(b). However, Section 25-61-11 states that the Public Records Act “shall not be construed to conflict with, amend, repeal or supersede any constitutional law, state or federal statutory law, or decision of a court of this state or the United States which ... specifically declares a public record to be confidential or privileged, or ... exempt from the provisions of this chapter.”

2.2 While the Mississippi Attorney General’s office opined in Turner that public records requests for candidate qualifying forms, the “email address, telephone numbers and mailing addresses (post office boxes)” may properly be redacted by the Secretary of State’s office

prior to disclosure, there is currently no “constitutional law, state or federal statutory law, or decision of a court of this state or the United States” that declares this information on candidate qualifying forms confidential, privileged or exempt from the Mississippi Public Records Act.

2.3 The Turner opinion discussed and relied on two earlier opinions<sup>2</sup> issued by the Attorney General’s office, but noted there is no Mississippi case law directly on point. In Smith (July 2, 1984), the Attorney General’s office opined that personnel information contained in public records is exempt from the Public Records Act pursuant a Miss Code Ann. Section 25-1-100, which specifically exempts personnel records from the Public Records Act. The Attorney General’s office concluded that “... documents which contain additional information which has not been released to the public and which infringe upon the rights of privacy of individual teachers should not be released but should be exempt. This office is of the opinion that addresses of employees, telephone numbers, and other related personal information is the type of public information to which those seeking such would not be entitled.”

2.4 In the other opinion, Miss. Att’y Gen. Op. 2013-00077 to Berryman (March 22, 2013), when asked by a Justice Court Clerk whether she was required to provide access to court docket information to verify social security numbers and birth dates, the Attorney General’s office, examining the statute exempting social security numbers from the Public Records Act (Miss. Code Ann. Section 25-1-111) and the statute exempting social security numbers, telephone numbers and dates of birth in voter registration files (Miss. Code Ann. Section 23-15-165), determined that while they are “aware that exceptions to the Mississippi Public Records Act are to be narrowly construed. . . , we find that Sections 25-1-111 and 23-15-165 are *in pari materia*<sup>3</sup> with the provisions of the Mississippi Public Records Act and are indicative of a general policy of the state with regard to the release of sensitive personal information, including social security numbers and birth dates, which appear in public records.”

2.5 The Turner opinion also looked to a New Hampshire case for guidance, Lambert v. Belknap County Convention, 949 A.2d 709 (N.H., 2008), where the New Hampshire Supreme Court employed a three-step analysis to determine whether disclosure of public records constitutes an invasion of privacy. However, unlike the Mississippi Public Records Act, the New Hampshire Access to Governmental Records and Meetings Act specifically limits disclosure of records that “would constitute invasion of privacy.” NH Rev Stat Section 91-A:5.IV.

2.6 Nevertheless, since the Turner opinion was not requested by the Clay County Circuit Clerk, it may only be used for informational purposes. See, Miss. Att’y Gen. Op. 2015-00156, Turner (June 4, 2015) and Miss. Att’y Gen. Op. 2010-00050, Bounds (Feb. 12, 2010). Section 7-5-25 provides that the Attorney General is authorized to issue official opinions to designated state and local public officers who request an opinion in writing “upon any question of law relating to their respective offices.” This section provides there shall be no liability, civil or criminal, that attaches to the public officer for actions taken in good faith in accordance with the direction of the opinion.

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<sup>2</sup> The Turner opinion also cites two other Mississippi Attorney General Opinions, Neyman (January 31, 2014) and Stanton (November 7, 2014). In Neyman, the opinion

<sup>3</sup> *In pari materia*, means “Upon the same matter or subject. Statutes in pari materia are to be construed together.” Blacks Law Dictionary, 2<sup>nd</sup> Ed. <https://thelawdictionary.org/in-pari-materia/>, accessed February 14, 2024.

2.7 As such, when adjudicating public records complaints, the Ethics Commission's authority is limited to enforcing the provisions of the Act. Exemptions to the Mississippi Public Records Act must be specific and narrowly construed. Harrison County Development Commission v. Kinney, 920 So.2d 497, 502 (Miss. App. 2006). A court or a statute must have specifically declared a record or portion of a record exempt from disclosure. Section 25-61-11. An exemption should not be inferred. A public body cannot broaden or otherwise define the scope of a statutory exemption through rule making or policy or rely on an opinion that was not issued to it.

2.8 In this case, there is no "constitutional law, state or federal statutory law, or decision of a court of this state or the United States" that specifically declares email address, telephone numbers and mailing addresses (post office boxes) on candidate qualifying forms confidential, privileged or exempt from the Mississippi Public Records Act. Accordingly, redacting this information was improper.

2.9 In contrast, there is a Mississippi statute that prohibits public bodies from disclosing social security numbers. See Section 25-1-111. There are also some Mississippi statutes that protect the addresses of certain classes of individuals from disclosure, including but not limited to: (1) Section 25-61-12 – home addresses of any law enforcement officer, criminal investigator, judge or district attorney (and their spouses or children); (2) Section 99-47-1 – addresses of victims of domestic violence enrolled in the Address Confidentiality Program; (3) Section 25-61-11.1 – home addresses of any person possessing a weapon permit issued under Section 45-9-101 or Section 97-37-7; (4) Section 19-5-319(3) – addresses of callers or persons the subject of emergency calls; (5) Section 25-62-3 – personal information of members, supporters, volunteers or donors of nonprofit 501(c) entities; and (6) Section 25-11-119(3) address of individual members of PERS. However, names, phone numbers, addresses and email addresses held by public bodies are generally not exempt from the Mississippi Public Records Act. See, e.g. Roberts v. Mississippi Republican Party State Executive Committee, 465 So.2d 1050 (Miss. 1985) (complete drivers' license records including names and address of all Mississippi license holders are public records).

2.10 However, public bodies should always exercise extreme caution when asked to release public records which contain sensitive personal information such as home addresses and may initially redact private information that does not appear to be included in the request. The release of private information in response to a public records request could subject a public body and individual public servants to liability for the intentional tort of invasion of privacy, as discussed in Taylor-Travis v. Jackson State Univ., 984 F.3d 1107 (2021). In Taylor-Travis, the U.S. Court of Appeals for the Fifth Circuit recognized the Mississippi tort of invasion of privacy, holding that in order to recover on a claim for invasion of privacy for public disclosure of private facts against a public body, the aggrieved party must prove "(1) that the [public body] gave publicity to private facts (2) that would be highly offensive to a reasonable person and (3) that were not of legitimate concern to the public." Id. at 1116. The Fifth Circuit noted that Mississippi has adopted the Second Restatement of Torts,<sup>4</sup> which

provides that "[on]e who voluntarily places himself in the public eye, by engaging in public activities, or by assuming a prominent role in institutions ... have general

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<sup>4</sup>See, Franklin Collection Serv., Inc. v. Kyle, 955 So. 2d 284, 291 (Miss. 2007); Young v. Jackson, 572 So. 2d 378, 382 (Miss. 1990).

... social or similar public interest ... cannot complain when he is giving publicity that he has sought.” Further, “publicity to information concerning either voluntary or involuntary public figures is not limited to the particular events that arouse the interest of the public.” That interest can extend “to further information concerning the individual and to facts about him, which are not public and which, in the case of one who had not become a public figure, would be regarded as an invasion of his purely private life.”

Id. at 1116-1117. In this case, in reliance on the Turner opinion, the Circuit Clerk redacted the emails addresses, phone numbers and mailing addresses believing that it was reasonable to protect this type of private information. However, the email addresses, phone numbers and mailing address of candidates for elected public office are not the type of information that would be considered “highly offensive to reasonable person” to reveal publicly. Moreover, it is recognized that public officials (and candidates running for public office) have voluntarily placed themselves in the public eye, such that the release of information which generally, might not be considered public information by an ordinary citizen, would not constitute invasion of privacy. Indeed, the complainant explained in the complaint that the contact information of political candidates is a matter of public interest, that the media and the public have a valid interest in contacting and independently verifying a candidate’s legitimacy, even when other mechanisms<sup>5</sup> are in place to determine a candidate’s legitimacy. As such, the release of such information does not rise to the level of improper public disclosure of private facts, and the Circuit Clerk’s redaction of the email addresses, telephone numbers and mailing addresses violates the Public Records Act.

2.11 Pursuant to Section 25-61-15 of the Act, “[a]ny person who shall deny to any person access to any public record which is not exempt from the provisions of this chapter or who charges an unreasonable fee for providing a public record may be liable civilly in his personal capacity in a sum not to exceed One Hundred Dollars (\$100.00) per violation, plus all reasonable expenses incurred by such person bringing the proceeding.” However, the Clay County Circuit Clerk reasonably relied upon a Mississippi Attorney General’s opinion issued to a state election official. Consequently, the Circuit Clerk’s exercise of caution in redacting information from candidate qualifying forms was justifiable and prudent, although ultimately unlawful, and should not subject the clerk to penalties.

### III. CONCLUSION

WHEREFORE, it is hereby ordered as follows:

3.1 The Ethics Commission finds the Clay County Circuit Clerk violated Section 25-61-5 of the Mississippi Public Records Act by redacting the email addresses, telephone numbers and mailing addresses from candidate qualifying forms.

3.2 The Ethics Commission orders the Clay County Circuit Clerk to provide unredacted documents responsive to the complainant’s public records request, within seven (7) working days of the issuance of a Final Order in this case.

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<sup>5</sup> County executive committees and elections commissions have statutory duties with regard to determining candidate legitimacy. See, Miss. Code Ann. Sections 23-15-263 and 23-15-359.

SO ORDERED, this the 12<sup>th</sup> day of April 2024.

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SONIA SHURDEN, Hearing Officer  
Mississippi Ethics Commission