

BEFORE THE MISSISSIPPI ETHICS COMMISSION

WILLIAM C. COON

COMPLAINANT

VS.

PUBLIC RECORDS CASE NO. R-22-009

JACKSON POLICE DEPARTMENT

RESPONDENT

ORDER OF DISMISSAL

This matter came before the Mississippi Ethics Commission through a Public Records Complaint filed by William C. Coon against the Police Department of the City of Jackson (the “city”). The city filed a response to the complaint by and through its attorney. The Ethics Commission has jurisdiction over this matter pursuant to Section 25-61-13, Miss. Code of 1972. The hearing officer prepared and presented a Recommendation of Dismissal to the Ethics Commission at its regular meeting held on October 7, 2022, at which time the commission approved this Order of Dismissal in accordance with Rule 5.6, Rules of the Mississippi Ethics Commission.

I. FINDINGS OF FACT

1.1 On January 11, 2022 Mr. William C. Coon, an attorney, submitted a public records request to the City of Jackson, for “all public records that relate to the arrest of Aquinta Helene Palmer on July 17, 2021.” He alleges in his complaint that the city “has refused to turn over any records” related to her arrest, stating, “[w]e have requested video and audio recordings of the incident and any and all incident reports. These are not exempt pursuant to Miss. Code Ann. §25-61-12.” Mr. Coon also states the criminal charges involved have been dismissed.

1.2 On February 4, 2022, the city provided a copy of the incident report to Mr. Coon through its public records portal, GovQA. On February 9, 2022, the city provided a written denial letter, stating that “any notes made by any law enforcement officer related to this incident, video recordings of the incident, audio recordings of the incident, and any reports, notes, video recording, audio recording or recording of any kind related to any internal investigation of the incident are beyond the scope of an ‘incident report’ and are exempt from disclosure under the Mississippi Public Records Act of 1983.”

1.3 In response to the complaint, the city reiterated that the materials requested by Mr. Coon, aside from the incident report which was provided to him, are exempt from production under the Act.

II. CONCLUSIONS OF LAW

2.1 The Mississippi Public Records Act of 1983 (the “Act”) declares that public records shall be available for inspection or copying by any person unless otherwise provided by law, and places a duty upon public bodies to provide access to such records. Section 25-61-2, Miss. Code of 1972. “Public records” are defined as all documents or records “having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any

business, transaction, work, duty or function of any public body.” Section 25-61-3(b). A public body must provide access to public records upon request of any person, unless a statute or court decision “specifically declares” a public record to be confidential, privileged, or exempt. Section 25-61-11.

2.2 Section 25-61-12(2)(a) of the Act exempts from production certain records held by a “law enforcement agency” such as the City of Jackson’s Police Department. Section 25-61-12(2)(a) states:

When in the possession of a law enforcement agency, investigative reports shall be exempt from the provisions of this chapter; however, a law enforcement agency, in its discretion, may choose to make public all or any part of any investigative report.

2.3 Section 25-61-3(f) defines “investigative report” as records of a law enforcement agency containing information beyond the scope of an incident report including, but not limited to, the following:

(i) Records that are compiled in the process of detecting and investigating any unlawful activity or alleged unlawful activity, the disclosure of which would harm the investigation which may include crime scene reports and demonstrative evidence;

(ii) Records that would reveal the identity of informants and/or witnesses;

(iii) Records that would prematurely release information that would impede the public body’s enforcement, investigative or detection efforts;

(iv) Records that would disclose investigatory techniques and/or results of investigative techniques;

(v) Records that would deprive a person of a right to a fair trial or an impartial adjudication;

(vi) Records that would endanger the life or safety of a public official or law enforcement personnel, or confidential informants or witnesses;

(vii) Records pertaining to quality control or PEER review activities; or

(viii) Records that would impede or jeopardize a prosecutor’s ability to prosecute the alleged offense.

2.4 In contrast, the Act defines an “incident report” as a narrative description of an alleged offense if such description (1) exists and (2) does not contain investigative information. See Section 25-61-3(e). The statutory definition also specifies that an incident report includes, at a minimum, the name and identification of each person charged with and arrested for the alleged offense, the time, date and location of the alleged offense, and the property involved, to the extent the information is known. However, personal information of victims, even if included on an

incident report, is specifically exempted from the Mississippi Public Records Act. See Section 25-61-12(2)(d) and 25-61-12(3).

2.5 The records sought by Mr. Coon, aside from the incident report, fall within the general definition and several of the enumerated examples listed above and are investigative reports which are exempt from production under the Public Records Act. See also, Miss. Att’y Gen. Op. No. 2014-00173, Gammill (May 23, 2014) (Records in the possession of an agency which has as one of its principal functions the investigation of criminal activity, even if those records involve only unlawful, but not criminal, activity, are exempt under the Public Records Act.). Section 25-61-12(2)(a) specifies that “investigative reports” are exempt from production under the Public Records Act; and a law enforcement agency, in its discretion, may choose to make public all or any part of any investigative report.” However, in its discretion, a law enforcement agency may also refuse to produce an investigative report in response to a public records request.

2.6 With regard to the statement in the complaint, that the criminal charges have been dismissed, the commission notes Section 25-61-3(f) does not explicitly state that the exemption created therein for investigative reports automatically expires once an investigation is closed or once charges are dismissed. Rather, the definition focuses on the effect any specific disclosure would have upon the processes and persons listed. See Jones v. Office of the Dist. Att’y, 19th Cir. Court Dist., Public Records Case No. R-19-004 and Cerniglia v. Miss. Bureau of Investigation, Public Records Case No. R-19-011.

2.7 Moreover, the documents requested by Mr. Coon that are directly related to an internal affairs investigation are considered personnel records, and as such, are exempt from disclosure under the Public Records Act. Section 25-1-100 of the Mississippi Code specifically exempts personnel records in the possession of a public body from the Mississippi Public Records Act. As noted in the Ethics Commission Public Records Opinion No. R-08-001, the term “personnel records” is not defined in that statute or within the Mississippi Public Records Act. Whether a particular document is a personnel record is a question of fact which must be decided on a case-by-case basis. However, the Mississippi Attorney General’s Office and the Mississippi Ethics Commission have repeatedly held that records directly related to an internal affairs investigation are considered exempt personnel records.¹ As such, these records were properly withheld from production pursuant to Mr. Coon’s public records request, and this exemption from production is not discretionary.

¹ See, Miss. A.G. Op., Oakes, 1992 WL 613935 (May 20, 1992) (“[A] personnel record in broad generic terms would include evaluations, applications for employment, recommendations submitted with applications, complaints made against a [public servant], and disciplinary measures contemplated or taken against a [public servant]...”) See also, Careless v. Madison County Sheriff’s Dept., Public Records Case No. R-18-037; Waide v. City of Hattiesburg, Public Records Case No. R-18-012; Hendrix v. Hinds County Sheriff’s Dept., Public Records Case No. R-17-021; Ward v. Tupelo, Public Records Case No. R-13-022 (reprimand in an email constituted personnel record); Public Records Opinion No. R-10-008, (a complaint filed against a law enforcement officer “that led to an internal affairs investigation or other personnel action, . . . could be [an] exempt personnel record.”); Public Records Opinion No. R-08-001 (a statement obtained during the course of an internal affairs investigation are “personnel records” and are exempt from the Public Records Act.)

WHEREFORE, the complaint is hereby dismissed this the 7th day of October, 2022.

MISSISSIPPI ETHICS COMMISSION

BY: _____
Tom Hood, Executive Director and
Chief Counsel