

BEFORE THE MISSISSIPPI ETHICS COMMISSION

ANNA WOLFE

COMPLAINANT

VS.

PUBLIC RECORDS CASE NO. R-18-030

MISS. DEPARTMENT OF HUMAN SERVICES

RESPONDENT

FINAL ORDER

This matter came before the Mississippi Ethics Commission through a Public Records Complaint filed by Ms. Anna Wolfe against the Mississippi Department of Human Services (hereinafter “MDHS”). The Ethics Commission has jurisdiction over this matter pursuant to Section 25-61-13, Miss. Code of 1972. In accordance with Rule 5.6, Rules of the Mississippi Ethics Commission, the hearing officer prepared and presented a Preliminary Report and Recommendation to the Ethics Commission at its regular meeting on January 4, 2019. The respondent did not object to the Preliminary Report and Recommendation and has thereby waived a right to a hearing on the merits. Accordingly, the hearing officer enters this Final Order in accordance with Rule 5.6, Rules of the Mississippi Ethics Commission.

I. FINDINGS OF FACT

1.1 Ms. Anna Wolfe’s Public Records Complaint involves two separate public records requests made to the Mississippi Department of Human Services, on October 3, 2017 and July 9, 2018. She alleges MDHS violated the Public Records Act by “failing to provide complete records pursuant to [her] requests, failing to respond within seven days of the request, and generally failing to communicate and explain its response.”

1.2 On October 3, 2017, Ms. Wolfe requested:

Any/all audits or expense reports regarding the expenditure of Temporary Assistance for Needy Families funds, including the amount spent on each program or voucher and what those programs entailed from 2012 to present.

Any/all performance reports regarding the state’s use of TANF funds and the effectiveness of the programs from 2012 to present.

This should include the most recent report for FY 2017. If that report has not yet been completed, I request that it be provided in response to this request once it is complete.

1.3 On October 4, 2017 Mr. Paul Nelson at MDHS sent an email to Ms. Wolfe acknowledging receipt of the request. On October 10, 2017, he followed up with a second email stating: “We are still working on gathering all of the data for the report.”

1.4 On October 30, 2017, Mr. Nelson provided via email the “Temporary Assistance for Needy Families Combined TANF and SSP-MOE WORK Participation Rate” for Fiscal Years 2012 – 2015, and “Temporary Assistance for Needy Families (TANF) ACF-196R Financial

Report: Part 1: Expenditure Data” submitted 1/29/2014, 2/18/2015, 6/3/2015, 10/30/2015, 2/3/2016, 4/29/2016, 5/5/2016, and 12/9/2016. In her complaint, Ms. Wolfe states the email “did not contain details about what the programs entailed and did not include any performance reports, nor did [Mr. Nelson] explain why those records, if they exist were omitted. He also did not include the FY 2017 report.”

1.5 In response, MDHS states the documents requested by Ms. Wolfe were “provided on October 30, 2017 via email and at no charge. Although fourteen (14) working days from October 3 would have been October 23, 2017, [MDHS] did not unreasonably deny or withhold the requested information.”

1.6 Ms. Wolfe’s second public records request, submitted July 9, 2018 requested:

Temporary Assistance for Needy Families (TANF) ACF-196R Financial Reports submitted during the time period Jan. 1, 2016 to present.

List of TANF grantees and amount granted in years 2015 through 2018.

1.7 On July 10, 2018, Mr. Nelson at MDHS notified Ms. Wolfe via email: “working on it Anna.” Ms. Wolfe sent a follow-up email on July 30 regarding the status, noting that it had been more than seven business days since making her request. On August 6, Ms. Wolfe sent another follow-up email. The same day, Mr. Nelson responded with “I’m writing the invoice letter now. I will send it to you soon.”

1.8 The next day, Mr. Nelson provided a letter stating that the documents responsive to her request could be provided at an estimated fee of \$260 (“8 hours total staff time, 4 hours at \$50.00 per hour plus 4 hours at \$15.00 per hour.”) and “[u]pon receipt of payment, a copy of the requested information will be forwarded to you.”

1.9 On August 7, 2018 Ms. Wolfe sent an email stating that she’s “not paying \$260” and requested “an explanation of the records I received, and why they were incomplete.”

1.10 On August 20, 2018, Mr. Nelson sent an email to Ms. Wolfe stating: “Please see the attached materials which supplement and complete your public records request made in October 2017. It is our understanding that you have canceled your recent request made on July 9, 2018.” Attached to the email were: “Temporary Assistance for Needy Families (TANF) ACF-196R Financial Report: Part 1: Expenditure Data” submitted 5/13/2016, 9/2/2016, 11/10/2016, 2/14/2017, 5/12/2017, 8/9/2017, 11/14/2017, 2/14/2018, 5/16/2018, and 6/20/2018.

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 a statute or court decision “specifically declares” a public record to be confidential, privileged, or exempt. Section 25-61-5(1)(a) mandates that “[n]o public body shall adopt procedures 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 receipt of the request for the production of the record.” Section 25-61-5(1)(b) allows up to (14) fourteen working days for production of public records when the public body provides 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.” Production of public records beyond fourteen (14) working days is allowed only upon “mutual agreement of the parties.” Section 25-61-5(1)(b). As a result, the Ethics Commission recommends that within five working days of receiving a public records request, a public body should do one of the following to avoid unintentionally violating the Act:

- (a) Provide the record;
- (b) Acknowledge that the public body has received the request and provide [in writing] a reasonable estimate of the time and costs it will require to fully respond, not to exceed fourteen working days;
- (c) Seek a clarification of the request; or
- (d) Deny the request. A public body's failure to provide a written denial is a violation of the act. See Section 25-61-5(3).

Comment 4.3(4), Rule 4, Mississippi Model Public Records Rules. That is, unless it is providing the records or claiming an exemption from disclosure within the seven working day period, a public body should provide, in writing, a reasonable estimate of the time and costs it will take to fully respond to the request, not to exceed fourteen days. The Ethics Commission has noted that upon being presented with a reasonable estimate of actual costs, requestors sometimes change the scope of their request, or decide to withdraw a request for public records. Processing requests prior to receiving a deposit can result in a public body incurring unnecessary costs which requestors do not intend to pay. See Public Records Case No. R-18-027 and R-16-020.

2.2 Based on the record before the Ethics Commission, it appears MDHS provided a written explanation on October 10, 2017 – the fifth working day after receiving Ms. Wolfe’s October 3, 2017 request. Without mutual agreement to extend the time allowed to produce documents, MDHS was required to produce records by October 23, 2017 (the 14th working day). As a result, MDHS’s production on October 30, 2017 and August 20, 2018 were untimely.

2.3 With regard to Ms. Wolfe’s July 9, 2018 public records request, it appears MDHS failed, within seven working days of receiving the request, to produce, deny or explain in writing why the records could not be produced within the seven working day period. Accordingly, although Ms. Wolfe eventually withdrew her public records request upon receiving an estimate of the cost to produce the documents, MDHS technically violated the Act.

III. CONCLUSION

WHEREFORE, IT IS HEREBY ORDERED as follows:

3.1 The Ethics Commission finds that the Mississippi Department of Human Services violated Section 25-61-5 by failing to provide documents responsive to Ms. Wolfe’s October 3, 2017 request within fourteen (14) working days.

3.2 The Ethics Commission finds that the Mississippi Department of Human Services violated Section 25-61-5, by failing, within seven working days of receiving Ms. Wolfe’s July 9, 2018 request, to produce, deny or explain in writing why the records could not be produced within the seven (7) working day period.

3.3 The Ethics Commission orders the Mississippi Department of Human Services, through its officials and employees, to strictly comply with the statutory deadlines and procedures set forth in Section 25-61-5.

SO ORDERED, this the 15th day of January, 2019.

SONIA SHURDEN, Hearing Officer
Mississippi Ethics Commission