

By: Representative Blackmon

To: Judiciary A

## HOUSE BILL NO. 1291

1 AN ACT TO AMEND SECTION 25-61-2, MISSISSIPPI CODE OF 1972, TO  
2 CLARIFY THE PUBLIC POLICY CONCERNING THE PUBLIC'S ACCESS TO PUBLIC  
3 RECORDS; TO AMEND SECTION 25-61-3, MISSISSIPPI CODE OF 1972, TO  
4 REVISE DEFINITIONS UNDER THE ACT; TO AMEND SECTION 25-61-5,  
5 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REDACTION OF EXEMPT  
6 MATERIAL IN PROVIDING ACCESS TO NONEXEMPT INFORMATION; TO AMEND  
7 SECTION 25-61-12, MISSISSIPPI CODE OF 1972, TO REVISE THE  
8 EXEMPTION OF CERTAIN LAW ENFORCEMENT AGENCY RECORDS FROM OPEN  
9 RECORDS REQUIREMENTS; TO AMEND SECTION 25-61-15, MISSISSIPPI CODE  
10 OF 1972, TO REVISE PENALTIES FOR VIOLATION OF THE MISSISSIPPI  
11 PUBLIC RECORDS ACT OF 1983; TO REPEAL SECTION 45-29-1, MISSISSIPPI  
12 CODE OF 1972, WHICH PROVIDES THAT CERTAIN INVESTIGATIVE AND  
13 CRIMINAL JUSTICE RECORDS ARE EXEMPT FROM PUBLIC ACCESS  
14 REQUIREMENTS; TO REPEAL SECTION 45-29-3, MISSISSIPPI CODE OF 1972,  
15 WHICH PROVIDES FOR EXEMPTION FROM THE PUBLIC RECORDS LAW OF  
16 CERTAIN LAW ENFORCEMENT RECORDS AND PERSONAL INFORMATION OF  
17 VICTIMS, AND FOR RELATED PURPOSES.

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

19 **SECTION 1.** Section 25-61-2, Mississippi Code of 1972, is  
20 amended as follows:

21 25-61-2. It is the policy of this state that public records  
22 shall be available for inspection by any person unless otherwise  
23 provided by this chapter; free and open examination of public  
24 records is in the public interest and the exceptions provided by  
25 law shall be strictly construed. Furthermore, providing access to  
26 public records is a duty of each public body and automation of  
27 public records must not erode the right of access to those  
28 records. As each public body increases its use of, and dependence  
29 on, electronic record keeping, each public body must ensure  
30 reasonable access to records electronically maintained, subject to  
31 records retention.

32 **SECTION 2.** Section 25-61-3, Mississippi Code of 1972, is  
33 amended as follows:

34           25-61-3. The following words shall have the meanings  
35 ascribed herein unless the context clearly requires otherwise:

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

45           (b) "Public records" shall mean all books, records,  
46 papers, accounts, letters, maps, photographs, films, cards, tapes,  
47 recordings or reproductions thereof, and any other documentary  
48 materials, regardless of physical form or characteristics, having  
49 been used, being in use, or prepared, possessed or retained for  
50 use in the conduct, transaction or performance of any business,  
51 transaction, work, duty or function of any public body, or  
52 required to be maintained by any public body.

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

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

62           (e) "Incident report" means a narrative description of  
63 an alleged offense, and at a minimum shall include the name and  
64 identification of each person charged with or arrested for the  
65 alleged offense, the time, date and location of the alleged

66 offense, the property involved, the vehicles involved, and the  
67 names of the investigating officers.

68 (f) "Investigative report" means records of a law  
69 enforcement agency containing information beyond the scope of the  
70 matters contained in an incident report, and generally will  
71 include the following matters if beyond the scope of the matters  
72 contained in an incident report:

73 (i) Records that are compiled in the process of  
74 detecting and investigating any unlawful activity or alleged  
75 unlawful activity, the disclosure of which would harm the  
76 investigation;

77 (ii) Records that would reveal the identity of  
78 informants;

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

82 (iv) Records that would disclose investigatory  
83 techniques;

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

86 (vi) Records that would endanger the life or  
87 safety of a public official or law enforcement personnel; or

88 (vii) Records pertaining to quality control or  
89 PEER review activities.

90 (g) "Law enforcement agency" means a public body that  
91 performs as one of its principal functions activities pertaining  
92 to the enforcement of criminal laws, the apprehension and  
93 investigation of criminal offenders, or the investigation of  
94 criminal activities.

95 **SECTION 3.** Section 25-61-5, Mississippi Code of 1972, is  
96 amended as follows:

97 25-61-5. (1) Except as specifically exempted under this  
98 chapter, all public records are hereby declared to be public

99 property, and any person shall have the right to inspect, copy or  
100 mechanically reproduce or obtain a reproduction of any public  
101 record of a public body in accordance with reasonable written  
102 procedures adopted by the public body concerning the cost, time,  
103 place and method of access, and public notice of the procedures  
104 shall be given by the public body, or, in the event that a public  
105 body has not adopted such written procedures, the right to  
106 inspect, copy or mechanically reproduce or obtain a reproduction  
107 of a public record of the public body shall be provided within one  
108 (1) working day after a written request for a public record is  
109 made. No public body shall adopt procedures which will authorize  
110 the public body to produce or deny production of a public record  
111 later than fourteen (14) working days from the date of request for  
112 the production of such record.

113 (2) If any public record contains material which is not  
114 exempted under this chapter, the public agency shall redact the  
115 exempted and make the nonexempted material available for  
116 examination.

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

126 **SECTION 4.** Section 25-61-12, Mississippi Code of 1972, is  
127 amended as follows:

128 25-61-12. (1) The home address, any telephone number of a  
129 privately paid account or other private information of any law  
130 enforcement officer, criminal investigator, judge or district  
131 attorney or the spouse or child of such law enforcement officer,

132 criminal investigator, judge or district attorney shall be exempt  
133 from the Mississippi Public Records Act of 1983. This exemption  
134 does not apply to any court transcript or recording if given under  
135 oath and not otherwise excluded by law.

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

140 (b) Nothing in this chapter shall be construed to  
141 prevent any and all public bodies from having among themselves a  
142 free flow of information for the purpose of achieving a  
143 coordinated and effective detection and investigation of unlawful  
144 activity. Where the confidentiality of records covered by this  
145 section is being determined in a private hearing before a judge  
146 under Section 25-61-13, the public body may redact or separate  
147 from such records the identity of confidential informants or the  
148 identity of the person or persons under investigation.

149 (c) Nothing in this chapter shall be construed to  
150 exempt from public disclosure a law enforcement incident report.  
151 An incident report shall be a public record. A law enforcement  
152 agency may release information in addition to the information  
153 contained in the incident report.

154 (d) Nothing in this chapter shall be construed to  
155 require the disclosure of information that would reveal the  
156 identity of the victim.

157 (3) Personal information of victims, including victim impact  
158 statements and letters of support on behalf of victims that are  
159 contained in records on file with the Mississippi Department of  
160 Corrections and State Parole Board shall be exempt from the  
161 provisions of this chapter.

162 **SECTION 5.** Section 25-61-15, Mississippi Code of 1972, is  
163 amended as follows:

164           25-61-15. Any person who shall willfully and knowingly deny  
165 to any person access to any public record which is not exempt from  
166 the provisions of this chapter shall be liable civilly in a sum  
167 not to exceed Twenty-five Dollars (\$25.00) for each day that the  
168 person was denied the right to inspect or copy the public record,  
169 plus all reasonable expenses incurred by such person bringing the  
170 lawsuit. Attorney's fees, costs and awards under this section  
171 shall be paid by the agency that the court determines is  
172 responsible for the violation.

173           **SECTION 6.** Section 45-29-1, Mississippi Code of 1972, which  
174 provides that certain investigative and criminal justice records  
175 are exempt from public access requirements, and Section 45-29-3,  
176 Mississippi Code of 1972, which provides for exemption from the  
177 public records law of certain law enforcement records and personal  
178 information of victims, are repealed.

179           **SECTION 7.** This act shall take effect and be in force from  
180 and after July 1, 2007.