

By: Senator(s) Burton

To: Judiciary, Division B

SENATE BILL NO. 2854

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.