

By: Representative McBride

To: Judiciary A

HOUSE BILL NO. 1152

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, otherwise provided by Sections 25-65-9 and 25-65-11, all



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

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

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

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

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



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

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

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

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

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

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

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



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

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

180 **SECTION 7.** This act shall take effect and be in force from
181 and after July 1, 2008.

