

**FILED**  
Page 1 of 11  
MAR 12 2021

**IN THE CHANCERY COURT OF THE HINDS COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT**

EDDIE JEAN CARR, CHANCERY CLERK  
BY K. Howard DC

**MANAGEMENT & TRAINING CORPORATION**

**PLAINTIFF**

v.

**CIVIL ACTION NO. 20-cv-856**

**MISSISSIPPI DEPARTMENT OF CORRECTIONS**

**DEFENDANT/  
CROSS-CLAIM DEFENDANT**

and

**THE MARSHALL PROJECT**

**DEFENDANT-INTERVENOR/  
CROSS-CLAIM PLAINTIFF**

**OPINION AND ORDER**

BEFORE THE COURT is the Motion to Dismiss or for Summary Judgment filed by Defendant-Intervenor and Cross-Claim Plaintiff, The Marshall Project. Also before the Court is The Marshall Project's Motion for Summary Judgment and for Default Judgment Regarding its Cross-Claim. The Court, having reviewed the pleadings on file, heard arguments of counsel, and being fully advised of the premises, finds and orders as follows:

**FACTS**

The core dispute in this matter arises from a public records request by The Marshall Project to the Mississippi Department of Corrections ("MDOC") to retrieve documents and reports related to the operation of three privately-run correctional facilities, including East Mississippi, Wilkinson County, and Marshall County correctional facilities. Plaintiff, Management & Training Corporation ("MTC") is a private corporation contracted with MDOC to operate the three facilities on behalf of the State of Mississippi.

On or about January 22, 2020, The Marshall Project initiated a public records request to MDOC for documents pursuant to the Mississippi Public Records Act (“PRA”), according to Miss Code Ann. §§ 25-61-1 *et. seq.* Alysia Santo, on behalf of The Marshall Project, requested copies of all Weekly Contract Monitor Reports and responses to those reports from the three state prisons run by MTC from January 2018 to the present.

On January 30, MDOC, by and through its staff attorney, confirmed receipt of the request. On February 11, MDOC’s staff attorney advised, in writing, that MTC would be notified about the request. MDOC specifically stated the following:

Please be advised that the requested documents may contain trade secrets or confidential commercial or financial information. Out of an abundance of caution, pursuant to Miss. Code Ann. §25-61-9, the Mississippi Department of Corrections will place the third-party [MTC] on notice of the subject request.

From March 3, 2020 to May 15, 2020, the representatives from MDOC and The Marshall Project corresponded, exchanging several emails relating to the redaction of documents and the costs of production. On May 15, 2020, it is alleged that the parties agreed to the following provisions concerning the production: 1) inmate names would be redacted, 2) officer names and security information that are not exempted by statute would be included, and 3) The Marshall Project would be charged \$1,036.48.

The Marshall Project mailed payment for the production of records to MDOC. The initial check could not be located by MDOC, but was eventually found; however, this was not before The Marshall Project stopped payment. The Marshall Project mailed a replacement check on June 1, 2020, which was deposited by MDOC on or about June 26, 2020. MDOC initially represented that the requested documents would be produced on July 10, 2020. The Marshall Project was advised the day before that the documents would not be ready as promised as the office was in transition.

There were other communications between The Marshall Project and MDOC regarding the status of production of the documents particularly July 15 and July 20, 2020.

On July 20, 2020, MTC filed its unopposed Petition for Protective Order and Injunctive Relief against MDOC to prevent the disclosure of certain information that it alleges “poses a serious threat to facility security and safety of inmates and staff.” On July 22, 2020, The Marshall Project received notice of the Petition *via* email, by and through MTC’s attorney. The Marshall Project petitioned this Court, unopposed, to intervene in the action. The relief was granted. The Marshall Project subsequently filed a cross-claim against MDOC seeking the immediate production of the documents subject to the request made seven months before MTC’s petition.

The Marshall Project now comes before the Court requesting dismissal of MTC’s petition for a protective order and injunction or motion for summary judgment for this Court to order the production of the documents. The Marshall Project further requests a default judgment against MDOC. MDOC alleges that it was not legally served with the cross-claim, and therefore, should not be required to answer the cross-claim.

After careful consideration of the pleadings filed before the Court, the arguments of counsel in open court, and the relevant authorities, the Court hereby finds that The Marshall Project’s motion to dismiss should be converted to a motion for summary judgment. The motion for summary judgment is granted in part, and denied in part. The Court grants the motion with respect to commercial and financial information subject to Miss. Code Ann. §25-61-9. The Court denies the motion as it relates to exemption subject to Miss. Code Ann. §25-61-11.1. The parties agreed to redaction of inmates names. All other requested information not specifically addressed in the opinion and order should be disclosed, as it fails to qualify as an exemption under the PRA.

Furthermore, MDOC's objection to jurisdiction of the cross-claim and The Marshall Project's motion for default judgment of its cross-claim are both denied.

### LEGAL ANALYSIS

- a. Whether documents requested by The Marshall Projects are subject to exemption, in whole or in part.

Miss. Code Ann. §25-61-1 *et. seq.* governs the production of documents subject to the PRA.

Section 25-61-2 provides in pertinent part:

**State policy regarding access to public records.**

*It is the policy of this state that public records shall be available for inspection by any person unless otherwise provided by this chapter, furthermore, providing access to public records is a duty of each public body and automation of public records must not erode the right of access to those records. As each public body increases its use of, and dependence on, electronic record keeping, each public body must ensure reasonable access to records electronically maintained, subject to records retention.*

Emphasis added.

Miss. Code Ann. §25-61-3(b) defines “**public records**” as:

*. . . all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions, thereof, and any other documentary materials, regardless of physical form or characteristics, 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, or required to be maintained by any public body.*

Emphasis added.

However, there are exceptions to the PRA. Miss. Code Ann. §25-61-9 provides in part:

**Trade secrets and confidential commercial or financial information.**

*. . . Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction under this chapter until notice to third parties has been given, but the records shall be released no later than twenty-one (21) days from the date the third parties are given notice by the public body unless the third parties have filed in chancery court a petition seeking a protective order on or before the expiration of the twenty-one day time period. Any party*

seeking the protective order shall give notice to the party requesting the information in accordance with the Mississippi Rules of Civil Procedure.

Emphasis added.

Miss. Code Ann. §25-61-12 specifies another exception to the PRA which provides in pertinent part:

**Exemption for private information of law enforcement, judicial and prosecutorial personnel; exceptions.**

. . . (1) The home address, any telephone number of a privately paid account or other private information of any law enforcement officer, criminal investigator, judge or district attorney or the spouse or child of the law enforcement officer, criminal investigator, judge or district attorney shall be exempt from the Mississippi Public Records Act of 1983. This exemption does not apply to any court transcript or recording if given under oath and not otherwise excluded by law.

. . .

. . . (2)(a) When in 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. . . .

. . . . .

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

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

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

Additionally, Miss. Code Ann. §25-61-11.1 also provides an exception to the PRA:

**Exemption for private information of persons possessing a weapon permit.**

The *name*, home address, any telephone number or other private information of any person who possesses a weapon permit issued under Section 45-9-101 or Section 97-37-7 shall be exempt from the Mississippi Public Records Act of 1983.

Relevant to this case, Miss. Code Ann. §97-37-7(1)(a) provides exemption from disclosure for persons meeting the following requirements:

**Deadly weapons; persons permitted to carry weapons; bond; permit to carry weapon; grounds for denying application for permit; required weapons training course; reciprocal agreements**

. . . . It shall not be a violation of Section 97-37-1 or any other statute for pistols, firearms or other suitable and appropriate weapons to be carried by duly constituted bank guards, company guards, watchmen, railroad special agents or duly authorized representatives who are not sworn law enforcement officers, agents or employees of a patrol service, guard service or a company engaged in the business of transporting money, securities or other valuables, while actually engaged in the performance of their duties as such, provided that such persons have made a written application and paid a nonrefundable permit fee of One Hundred Dollars (\$100.00) to the Department of Public Safety. . . .

In the case presented, it is undisputed that The Marshall Project submitted a public records request to MDOC on January 22, 2020. As an agency of state government, MDOC is subject to the provisions of the PRA, except some exemption thereof. MTC admits that the requested documents are “regularly generated as a requirement of the contract between MTC and MDOC by a MDOC employee known as Contractor Monitor.” The Marshall Project claims that MTC requests exemption from disclosure based upon Miss. Code Ann. §25-61-9, which only provides twenty-one days to bring an action in to prevent disclosure after notice of the request. However, MTC argues that The Marshall Project is mistaken. In its filed brief, MTC does not object to the disclosure of the documents subject to the PRA but argues that the documents are subject to redaction pursuant to Miss. Code Ann. §25-61-12. The plain language of §25-61-12 does not address the procedure nor a deadline where a third party may object to disclosure without redaction of documents. The only provision of the PRA providing guidance on this issue is §25-61-9 which imposes the 21 day deadline. Notably, MTC has not argued that it filed its petition within twenty-one days after being notified of the PRA. MDOC advised The Marshall Project that it would notify MTC as early as January 30, 2020. MTC filed its petition challenging the PRA on July 20, 2020, approximately six months later.

While The Marshall Project's argument is persuasive, the Court is inclined to view the motion in the light most favorable to MTC as the non-moving party in the motion to dismiss and assess whether exemption under Miss. Code Ann. §25-61-12 is applicable. The plain reading of the provision permits for the redaction of the personal information *i.e.* "*home address, any telephone number of a privately paid account or other private information of any law enforcement officer. . .*". The provision goes on to express that "*victim*" information is exempted, as well. Incident reports are not exempted from the act. To satisfy those provisions, The Marshall Project agreed to the redaction of inmate names who may currently be or later become victims. However, there is no recognized exemption by this provision for the redaction of the names of individual officers. The redaction is only applicable to their private information—home address, telephone number, etc.

Miss. Code Ann. §25-61-11.1 exempts from disclosure the name, home address, any telephone number or other private information of any person who possesses a weapon permit if issued under §45-9-101 or §97-37-7. MTC argued this exception for the first time during oral presentation of the motions. The facts presented to the Court do not clarify whether all of MTC's security officers carry weapons while working in the course and scope of their employment. Miss. Code Ann. §97-37-7 concerns deadly weapons; persons permitted to carry weapons; bond; permit to carry weapon; grounds for denying application for permit; required weapons training course; reciprocal agreements. This statute provides that the following persons may carry pistols, firearms or other suitable and appropriate weapons if such persons have provided the Department of Public Safety with a written application and paid a nonrefundable \$100 permit fee:

“[. . .] duly constituted bank guards, company guards, watchmen, railroad special agents or duly authorized representatives who are not sworn law enforcement officers, agents or employees of a patrol service, guard service or a company engaged in the business



of transporting money, securities or other valuables, while actually engaged in the performance of their duties.”

Section 45-9-101 does not apply in this matter. Provided that this statute applies, the name, home address, telephone number or other private information concerning MTC’s “company guards . . . duly authorized representatives who are not sworn law enforcement officers, agents or employees of a . . guard service . . . while actually engaged in the performance of their duties” are exempt from disclosure in public records.

Moreover, there is no provision in the Act which authorizes the non-disclosure or redaction of documents based upon the possibility of “a serious threat to facility security and to the safety of inmates and staff” which MTC argues is its concern should the reports be presented to the public. MTC cites no legal authority for support of its position. The disclosure concerns articulated by MTC, “ongoing evaluations and self-assessments of the operations at each Facility by the Contract Monitor and by MTC” and “information of individual law enforcement officers, offenders and vendors of MTC” do not involve personal or private information. Rather, the information MTC seeks to redact or prevent from disclosure appears to be closely aligned with the very information exempted by the Act in §25-61-9, as trade secrets and confidential or financial information subject to the 21 day deadline which MTC has failed to meet. MTC and MDOC have wholly failed to demonstrate how public dissemination of the requested public records causes serious threat to facility security and the safety of both inmates and MTC staff.

b. Jurisdiction of The Marshall Project’s Cross-Claim against MDOC.

MDOC alleges that it was not properly served with the cross-claim by The Marshall Project, and thus, the cross-claim is not properly before the Court. It answers and argues the cross-claim under protest. However, the Court is unpersuaded by this argument since the cross-claim was filed



and served during a period within which the Court already maintained jurisdiction over the parties, including MDOC. See Miss. R. Civ. Proc. 5. Therefore, MDOC's objection to this Court's jurisdiction of the cross-claim is denied.

c. Default judgment against MDOC.

The Marshall Project also requested that default judgment be entered against MDOC for its failure to timely answer the cross-claim. The court docket in this matter shows no evidence of a clerk's entry of default. Further, MDOC made numerous attempts to defend the allegations of the cross-claim before and after the filing of the cross-claim. See Miss. R. Civ. Proc. 55. Therefore, The Marshall Project's request for default judgment against MDOC is denied.

### **CONCLUSION**

It is undisputed that on January 22, 2020, MDOC received a request from The Marshall Project that is subject to the PRA codified at Miss. Code Ann. §25-61-1 et. seq. After substantial attempts to agree to the terms of the disclosure of the public records, MDOC notified its third party contractor, MTC of the request. The parties agreed to redaction of inmate names and a fee for retrieval. More than twenty-one days after being notified, MTC filed for injunctive relief to prevent the disclosure or to redact certain information from the public records. Any information subject to redaction under §25-61-9 should be produced since MTC failed to meet the twenty-one (21) day deadline for filing an action. However, MTC may be entitled to the redaction of officer names under §25-61-11.1 provided the requirements of §97-37-7 are met. MTC failed to submit sufficient proof for redaction or exemption of any other information pursuant to Miss. R. Civ. Proc. 65 or otherwise. Both the jurisdictional challenge of the cross-claim and the motion for default judgment are denied for the reasons stated above.

This request has been outstanding for more than year. The Marshall Project paid MDOC the costs for retrieving documents months ago. For reasons previously stated, the Court denies The Marshall Project's motion to dismiss the complaint but grants The Marshall Project's motion for summary judgment with respect to MTC. MDOC is hereby ordered to produce any and all records or other tangible things subject to The Marshall Project's public records request for MDOC On-Site Monitoring Worksheets and Weekly Contract Monitor Reports submitted on January 20, 2020, within ten (10) days from the date of this Order. The documents may be produced with the redaction of only 1) inmate names and the home addresses, telephone numbers, and 2) other private information of security guards. The names of security guards shall not be redacted unless expressly meeting the requirements under Miss. Code Ann. §97-37-7 on or before January 22, 2020.

**IT IS, THEREFORE, ORDERED AND ADJUDGED**, that The Marshall Project's motion to dismiss or for summary judgment is denied in part, and granted in part. MDOC shall produce any and all records and other tangible things subject to The Marshall Project's Public Records Act request for MDOC On-Site Monitoring Worksheets and Weekly Contract Monitor Reports submitted on January 20, 2020, within ten (10) days from the date of this Order.

**IT IS, FURTHER, ORDERED AND ADJUDGED**, that documents subject to the request may be produced with the redaction of the following information only:

- 1) Inmate names and
- 2) The home addresses, telephone numbers, and other private information of security guards. The names of security guards shall not be redacted unless expressly meeting the requirements under Miss. Code Ann. §97-37-7 on or before January 22, 2020.

- 3) Any documents or information not specifically addressed for redaction or exemption by this order shall be produced by MDOC within ten (10) days from the date of this Order.

SO ORDERED, this the 12<sup>th</sup> day of March, 2021.

  
\_\_\_\_\_  
CHANCELLOR