

IN THE CHANCERY COURT OF RANKIN COUNTY
THE STATE OF MISSISSIPPI

INSIDER, INC.

PLAINTIFF

V.

CAUSE NO. 22-1143

RANKIN COUNTY SHERIFF'S DEPARTMENT

LARRY SWALES
Chancery Clerk, Rankin County

DEFENDANT

JUDGMENT

BEFORE THIS COURT is Insider, Inc.'s ("Insider"), Complaint [MEC No. 1] against the Rankin County Sheriff's Department ("the Department") seeking injunctive relief, costs, expenses, and attorney's fees; Insider's Motion to File a Supplemented Complaint [MEC No. 17]; and the Department's Motion to Dismiss, Motion for Judgment on the Pleadings, or in the alternative, Motion for Summary Judgment [MEC No. 6]. On February 16, 2023, the Court heard those motions, which the parties agreed would be the terminal proceeding in the case, did not require witness testimony, would determine and dispose of all issues in the litigation, and which would allow this Court to render a final judgment. The Court considered all relevant case and statutory law, as well as all written and oral arguments. After diligent consideration, the Court **FINDS, ORDERS, and ADJUDGES** as follows:

1. This Court has jurisdiction over this matter and venue is proper per Miss. Code Ann. § 25-61-13.
2. On February 17, 2022, Insider sent multiple requests for records under Mississippi's Public Records Act of 1983 to the Department, related to the deaths of four individuals in 2021. These deaths occurred either during an incident in which the Department was

present, or while the individuals were in the custody of the Department. These are incidents about which the public would have a heightened interest.

3. The Department responded to the request by producing certain records and not others. Insider called certain withheld documents “incident reports” while the Department called them “investigative reports.”

4. The job of investigating these incidents was turned over to the Mississippi Bureau of Investigation (“MBI”) per state law. At the time of Insider's public information request, MBI was still investigating these matters. The Department informed Insider that the documents withheld were being withheld only temporarily since MBI's investigation was ongoing. The Department agreed to produce the withheld records after a final finding by MBI or at the conclusion of any criminal proceedings.

5. In July of 2022, the MBI investigations concluded. The Department subsequently produced the withheld documents. Therefore, at the time of the February 16, 2023, hearing, all issues raised in the Complaint were moot except the request for costs, expenses, and attorney fees. In order to address the issue of whether costs, expenses, and attorney fees should be awarded, the Court must first determine whether the Department wrongfully denied Insider's public record request at the time of the filing of the Complaint.

6. As an initial matter, the Court finds that the Department abandoned its Motion to Dismiss on the basis that MBI—a separate and distinct law enforcement agency—is a necessary party, since the Department's failed to argue that motion at the hearing. The Court further denies as untimely Insider's Motion to File a Supplemented Complaint. That motion was filed on the morning of the scheduled hearing and concerned incidents not related to the specific incidents set forth in the initial Complaint. The Court's bench ruling on those motions is incorporated herein.

7. Turning to whether the Department wrongfully denied Insider's public record request, the distinction between "incident reports" and "investigative reports" is important. Miss. Code Ann. § 25-61-12(2)(a) states: "When in the possession of a law enforcement agency, investigative reports shall be exempt from the provisions of this chapter." Subsection (c) of that same Code section states, "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." Therefore, this Court must determine whether the withheld documents constitute incident reports or investigative reports.

8. Miss. Code Ann. § 25-61-3(e) defines an incident report as "a narrative description, if such narrative description exists and if such narrative description does not contain investigative information, of an alleged offense, and at a minimum shall include the name and identification of each person charged with and arrested for the alleged offense, the time, date, and location of the alleged offense, and the property involved, to the extent this information is known."

9. Miss. Code Ann. § 25-61-3(f) defines an investigative report as "records of a law enforcement agency containing information beyond the scope contained in an incident report, and generally will include, but not be limited to, the following matters" The definition then goes on to list certain matters such as "records that are compiled in the process of detecting and investigating any unlawful activity or alleged unlawful activity, the disclosure of which would harm the investigation," and, "records that would reveal the identity of confidential informants," and, "records that would prematurely release information that would impede the public body's enforcement, investigative or detection efforts," and, "records that would disclose investigatory techniques."

10. The Court has reviewed the documents temporarily withheld by the Department, and per this Court's review, certain of those documents temporarily withheld are incident reports

under Code Section 25-61-3(e). Any information contained therein which could arguably be called “investigative” could have been and should have been redacted, rather than universally withheld. See Miss. Code Ann. § 25-61-5(2).

11. It is the policy of the State of Mississippi “that public records must be available for inspection by any person unless otherwise provided [by the Mississippi Public Records Act of 1983]. Furthermore, providing access to public records is a duty of such public body” Miss. Code Ann. § 25-61-1.

12. The Mississippi Supreme Court stated: “There is to be a liberal construction of the general disclosure provisions of a public records act, whereas a standard of strict construction is to be applied to the exceptions to disclosure[.] Any doubt concerning disclosure should be resolved in favor of disclosure[.]” *Miss. Dep’t of Wildlife, Fisheries & Parks v. Miss. Wildlife Enforcement Officers’ Ass’n*, 740 So. 2d 925, 936 (Miss. 1999); *Harrison County Dev. Comm’n v. Kinney*, 920 So. 2d 497, 502 (Miss. Ct. App. 2006).

13. Further, documents that are incident reports do not turn into investigatory reports simply by being submitted to a third-party investigatory agency. See *Feldman v. Madison County Sheriff’s Department*, Miss. Ethics Comm’n, Cause Number R-17-14 (Feb. 22, 2018).

14. This Court finds, after reviewing the requested documents, that the Department failed to timely produce to Insider incident reports—even incident reports redacted of arguably investigatory materials. Miss. Code Ann. § 25-61-15 provides, “any person who shall deny to any person access to any public record which is not exempt from the provisions of this chapter . . . may be liable civilly . . . in a sum not to exceed [\$100.00] per violation, plus all reasonable expenses incurred by such person bringing the proceeding.” (emphasis added).

15. The Court finds that the Department made a reasonable—though ineffective—argument for withholding the documents. The Department relied in good faith on advice from

counsel when it initially withheld the documents. Further, the requested documents were subsequently and timely produced to Insider following MBI's investigation, and this Court could not find—nor could Insider show—where the Department had been previously found to be in violation of the Mississippi Public Records Act. As a result, the Court, in its discretion, denies Insider's request for expenses, costs, and attorney's fees.

16. The Court's February 16, 2023, bench ruling is incorporated herein.

SO ORDERED, ADJUDGED AND DECREED, this 10th day of March, 2023.



RANKIN COUNTY CHANCELLOR