

FILED
MAY 12 2020

EDDIE JEAN CARR, CHANCERY CLERK
BY K. Howard D.C.

IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI

**HATTIESBURG PUBLISHING, INC.,
dba THE PINE BELT NEWS**

PLAINTIFF

V.

No: *G 2020-502 1/2*

**MISSISSIPPI STATE DEPARTMENT OF HEALTH,
LIZ SHARLOT, THOMAS DOBBS, AND JIM CRAIG**

DEFENDANT

INITIAL COMPLAINT AND REQUEST FOR EMERGENCY RELIEF

COMES NOW Plaintiff, HATTIESBURG PUBLISHING, INC. (“Plaintiff”) dba The Pine Belt News, and files this Complaint against the Mississippi State Department of Health and in support would show the following to wit:

1. Pursuant to Miss. Code Ann. § 25-61-13, “Any party may petition the chancery court of the county in which the public body is located to enforce or appeal any order of the Ethics Commission issued pursuant to this chapter. In any such appeal the chancery court shall conduct a de novo review. Nothing in this chapter shall be construed to prohibit any party from filing a complaint in any chancery court having jurisdiction, nor shall a party be obligated to exhaust administrative remedies before filing a complaint. However, any party filing such a complaint in chancery court shall serve written notice upon the Ethics Commission at the time of filing the complaint. The written notice is for information only and does not make the Ethics Commission a party to the case.”

2. Plaintiff is a Mississippi corporation that publishes The Pine Belt News (“PBN”) newspaper in Forrest County, whose principle place of business is Forrest County, Mississippi, and whose corporate headquarters is located in Jackson, MS.

3. Defendant, Mississippi State Department of Health (“MSDH”), is a public body as defined by § 25-61-3(a) Mississippi Code (Mississippi Public Records Act) and has offices

throughout the state, including offices located in Forrest County operating extensively in Forrest County, but whose headquarters is in Jackson, MS.

4. Defendant, Liz Sharlot, is the Director of Communications for MSDH whose office is located in Jackson, MS.

5. Defendant, Thomas Dobbs, is the State Health Officer for MSDH whose office is located in Jackson, MS.

6. Defendant, Jim Craig, is a Senior Deputy and Director in MSDH's Office of Health Protection whose office is located in Jackson, MS.

7. Ingrid Dave Williams is chief legal counsel for the MSDH.

8. On April 5, 2020, Joshua Wilson, managing editor for PBN who was acting at all times relevant to this complaint as an agent of the Plaintiff, emailed Defendant, Liz Sharlot, requesting certain information regarding long term care facilities impacted by COVID-19 outbreak in Forrest County be released to the public. Namely Mr. Wilson requested the names of facilities impacted, the owners of the impacted facilities, when MSDH became aware of the outbreaks and how MSDH was notified, how many residents of the facilities have been infected, how many tests have been done, how many people were exposed to the outbreak, and what additional measures were being taken. *See Exhibit A.*

9. On April 6, 2020, defendant Liz Sharlot refused via email to release the requested information to Mr. Wilson stating without explanation or citation to the specific exemption for the denial of Mr. Wilson's request that "We are not releasing the names of the LTCF." *See Exhibit A.*

10. On April 6, 2020, Mr. Wilson filed a Public Records Request/Report (Form No. 20 E) Joshua Wilson on behalf of the plaintiff requesting the following information pertinent to the COVID-19 outbreak regarding long term care facilities in Forrest County: "the facility, the owner

of the facility and the number of residents affected and tested for the illness.” In this request, Mr. Wilson cited Miss. Code. Ann. § 25-61-1 et. seq. which provides that a requesting party is entitled to a response in any event no later than 14 days after receipt of the request. *See* Exhibit B.

11. On April 27, 2020, 21 days after the submission of the Public Records Request/Report, Mr. Wilson filed a formal Public Records Complaint (Form MEC-R1.4) with the Mississippi Ethics Commission regarding this Public Records Request. *See* Exhibit C.

12. On April 29, 2020, Mr. Wilson submitted notice of the Public Records Complaint mentioned in Paragraph 11 to Liz Sharlot and requested that the complaint be forwarded to Thomas Dobbs. *See* Exhibit D.

13. On April 31, 2020, Jim Craig submitted a reply to the April 6, 2020 Public Records Request denying the request due to a lack of capacity and resources to respond to the request without stating a specific exemption under the Mississippi Public Records Act of 1983. Miss. Code Ann. 21-61-1 et. seq. *See* Exhibit E. The Plaintiff finds this to be a wholly unsupported reason for denying the claim, both factually and legally.

14. On May 1, 2020, Mr. Wilson received an email from Liz Sharlot acknowledging the filing of the Public Records Complaint in which she explained that the request that was sent on April 6, 2020 had been forwarded to Chief Legal Counsel for MSDH, Ingrid Dave Williams. This is despite the fact that Miss. Code Ann. § 21-61-5 states that “No public body shall adopt procedures which will authorize the public body to produce or deny production of a public record later than seven (7) working days from the date of the receipt of the request for the production of the record.” *See* Exhibit F. If Liz Sharlot’s claim that the process for records requests is always forwarded to the legal department and the legal department is unable to respond under the demands

of the law within 7 days, then the MSDH is out of compliance with the procedural rigors and demands of the Mississippi Public Records Act of 1983.

15. On May 5, 2020, in response to an email from David Gustafson, the publisher of PBN, the Mississippi Ethics Commission informed Plaintiff that it “will likely take several months before the commission can take up this case”. *See* Exhibit G.

16. The MSDH has wrongfully denied Plaintiff’s public records request, claiming no exemption under the Public Records Act. Plaintiff would show that the requested records are neither exempt pursuant to the Mississippi Public Records Act of 1983 even though no provision was cited to support the rejection by the MSDH nor are these records exempt pursuant to any other provision of state or federal law.

17. Plaintiff would show that pursuant to Miss. Code Ann. § § 25-61-1 and 25-61-2, the MSDH has a duty to allow Plaintiff to inspect and/or copy the public records set forth in Exhibit C, which are subject to this public records request and that duty was breached.

18. Plaintiff would further show that in construing the Mississippi Public Records Act openly in favor of access and strictly against the existence of any exemption or exemptions, the Court should enter an order requiring the MSDH to make the Plaintiff’s requested public records available immediately.

19. Pursuant to Miss. Code Ann. § 25-61-13 Mississippi Code this action shall take precedence on the docket over all other matters and should be assigned for hearing and trial at the earliest practicable date and expedited in every way. Plaintiff requests that the Court set this case for hearing upon 3-days-notice and that the Court thereafter enter an order compelling production of the public records at issue for dissemination, inspection and/or copying.

20. The information requested herein is of necessitous import to the residents of Forrest County to make informed decisions about their activities, which bear greatly on their health risks and safety during the COVID-19 pandemic. The information is needed immediately, not months from now under any decision of the Mississippi Ethics Commission or after the COVID-19 pandemic is no longer an emergency. The MSDH has cited no legal provisions, precedents, or supervening statutes to keep this information from the public. The procedural barriers the MSDH has set in partition to the requested information to which they have and have admitted to have ready access to stand against the intent of the Mississippi Public Records Act and the very reasoning cited by the MSDH in denying access to these records. The people of Forrest County and more broadly the state of Mississippi have a right to know where and how severe the particular outbreaks of COVID-19 are as a matter of course. The fact that the state is under the threat of a global pandemic only works to strengthen the argument that, even if the requested information would otherwise be exempted (the Plaintiffs find no provision of law to support such an exemption), the people should have ready access to complete and transparent information regarding COVID-19.

WHEREFORE, PREMISES CONSIDERED, Hattiesburg Publishing, Inc. files this Complaint under the Mississippi Public Records Act and requests the Court to enter an order compelling the Mississippi State Department of Health to produce for dissemination, inspection and/or copying those public records as described above in paragraph 10 and set forth in Exhibit B to the Complaint along with attorney's fees and costs provided by Miss. Code Ann. § 25-61-15 Mississippi Code and, if mistaken in the relief being sought, Hattiesburg Publishing, Inc. requests such other further, and general relief as in equity it may be entitled to receive.

RESPECTFULLY SUBMITTED this the 12th day of May, 2020.

HATTIESBURG PUBLISHING, INC.

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