

**FILED**

MAY 26 2020

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

EDDIE JEAN CARR, CHANCERY CLERK

BY *[Signature]* D.C.

**HATTIESBURG PUBLISHING, INC.,  
D/B/A THE PINE BELT NEWS**

**PLAINTIFF**

**V.**

**CAUSE NO. G2020-502 G/2**

**MISSISSIPPI STATE DEPARTMENT OF  
HEALTH, LIZ SHARLOT, DR. THOMAS DOBBS,  
and JIM CRAIG**

**DEFENDANTS**

**ORDER GRANTING EMERGENCY INJUNCTIVE RELIEF**

BEFORE THIS COURT is Plaintiff's *Initial Complaint and Request for Emergency Relief* seeking an order compelling Defendants to produce for dissemination, inspection, and/or copying certain alleged public records. This Court held hearing on the matter in open court via Zoom digital conferencing on May 20, 2020. After careful consideration of the verified *Amended Initial Complaint*, the attached exhibits identified as email correspondence between Plaintiff and Defendants, and other pleadings and submissions, as well as all oral argument, the Court does hereby find and order as follows:

**PARTIES**

Plaintiff Hattiesburg Publishing, Inc., d/b/a The Pine Belt News ("PBN") publishes a newspaper in Forrest County, Mississippi. The Mississippi State Department of Health ("MSDH") is a governmental agency and a public body as defined by the Mississippi Public Records Act, §§ 25-61-1 et seq. Liz Sharlot is the Director of Communications for MSDH, Dr. Thomas Dobbs is the State Health Officer for MSDH, and Jim Craig is the Senior Deputy Director for MSDH Office of Health Protection. During the hearing of this matter, the Court determined that the individual Defendants had not been properly served with process; by

agreement of counsel, the Court proceeded with hearing as MSDH is the only named Defendant capable of providing the requested relief.

### FACTS

On April 5, 2020, the managing editor for PBN emailed Liz Sharlot requesting certain information regarding the impact of COVID-19 on long term care facilities in Forrest County. Specifically, PBN requested the names of facilities impacted, the owners of the impacted facilities, the time and manner when MSDH became aware of the outbreaks, the number of residents diagnosed as positive in each facility, the number of tests performed in the facilities, the number of people exposed to the outbreak, and the additional measures taken by MSDH. On April 6, 2020, Liz Sharlot responded to the request via email stating that MSDH was not releasing the names of the facilities impacted. On that same date, the managing editor of PBN filed a Public Records Request/Report 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.”

Having received no response to the Public Records Request/Report, PBN filed a formal Public Records Complaint with the Mississippi Ethics Commission on April 27, 2020. On April 29, 2020, PBN submitted notice of the Public Records Complaint to Liz Sharlot and requested that the same be forwarded to Dr. Thomas Dobbs. 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. On May 1, 2020, Liz Sharlot advised PBN via email that the Public Records Request had been forwarded to Chief Legal Counsel for MSDH. On May 5, 2020, PBN was advised that the Mississippi Ethics Commission would “likely” be unable to consider the Public Records Request for several months. Plaintiff thereafter filed the current

action seeking emergency relief under Miss. Code Ann. § 25-61-13. In accord with Rule 65(c) of the Mississippi Rules of Civil Procedure, Plaintiff shall post bond in the amount of \$100.00 upon entry of this Order.

### ANALYSIS

Mississippi Rule of Civil Procedure 65 does not prescribe the circumstances in which a preliminary injunction or temporary restraining order may be granted; the grant or denial of injunctive relief remains a matter for the trial court's discretion, exercised in conformity with traditional equity practice. *See* V. Griffith, *Mississippi Chancery Practice*, § 442 (2d ed. 1950). However, Mississippi case law has provided guidance in the consideration of injunctive relief. The court should balance the equities and make four findings: (1) there exists a substantial likelihood that the plaintiff will prevail on the merits; (2) the injunction is necessary to prevent irreparable harm; (3) threatened injury to the plaintiff outweighs the harm an injunction might do to the defendant; and (4) entry of a preliminary injunction is consistent with the public interest. *City of Durant v. Humphreys County Memorial Hospital/ Extended Care Facility*, 587 So. 2d 244 (Miss. 1991). In the case at hand, the Court finds that these four factors have been met.

First, this Court finds that there exists a substantial likelihood that PBN will prevail on the merits. PBN has complied with all relevant requirements of the Mississippi Public Records Act of 1983. PBN has submitted the appropriate request for public records held by a public body. Conversely, MSDH has failed to meet the legislatively mandated responses in this action. MSDH failed to produce the records within seven (7) days, failed to provide a written explanation of why the documents could not be produced within seven (7) days, and failed to provide a written statement of the specific exemption relied upon for denial of the requested documents. While the Court is

sympathetic to the untenable position of MSDH in facing the current pandemic with limited resources and capabilities, the legislature has mandated certain actions by all public bodies in an effort to maintain transparency and public access to public records. Unfortunately, MSDH failed in its legislative duty to provide public access. Accordingly, this Court finds that PBN is substantially likely to prevail upon the merits herein.

Second, this Court finds that PBN has demonstrated that an injunction is necessary to prevent irreparable harm. PBN is a news media outlet engaged in reporting on current notable events. The current pandemic involves daily reporting on the impacts of COVID-19 on Mississippi. Denying PBN access to public records in violation of the Mississippi Public Records Act of 1983 will result in a lack of information which will significantly hinder PBN's ability to inform the public. In addition, the lack of information will lead to a loss of audience and an ultimate loss of business. Therefore, PBN will suffer irreparable harm if an injunction is not granted.

Next, this Court finds that the threatened injury to PBN outweighs the harm that an injunction might do to MSDH. As set forth above, PBN will suffer significant and irreparable harm if injunctive relief is denied. However, if injunctive relief is granted, MSDH will only be required to fulfill its existing responsibilities under the Mississippi Public Records Act as required by the legislative mandates. Therefore, the grant of this injunction will result in no real additional damage to MSDH as opposed to substantial harm to PBN if the injunction was denied.

Finally, this Court finds that injunctive relief is consistent with the public interest. The public interest is obviously served by upholding statutory requirements and by enforcing Mississippi statutory law, specifically including those regarding the proper actions of public bodies responsible for maintaining public information. Further, the public interest is served by maintaining

transparency and public access to public information when the appropriate requests for such information are made. Accordingly, injunctive relief herein serves the public interest.

Based upon the foregoing reasons, this Court grants the request of Plaintiff to compel certain actions on behalf of MSDH. Specifically, the Court directs that MSDH shall comply with the provisions Miss. Code Ann. 21-61-5 and shall provide PBN with access to or copies of public records containing information regarding Forrest County long term care facilities impacted by COVID-19 specifying “the facility, the owner of the facility and the number of residents affected and tested for the illness” or shall provide PBN with a written statement of the specific exemption relied upon by MSDH for denying access to such information within seven (7) days of entry of this Order.

**SO ORDERED, ADJUDGED AND DECREED** on this the 26th day of May, 2020.

  
CHANCELLOR TIFFANY GROVE