

Public Employees' Retirement System

Board of Trustees

June 22, 2010

Regulatory Change

Regulation 38 Access to Public Records under Mississippi Public Records Act of 1983

The proposed amendments to Regulation 38 are made to conform the regulation with the modifications made to the Mississippi Public Records Act pursuant to H. B. 113 (2010 Legislative Session). These statutory changes, which take effect July 1, 2010, change the period within which a public body has to produce requested public records. The time frame for producing or denying production of such records has been reduced from fourteen (14) days to seven (7) days, except as otherwise provided. The statutory change also requires the public body to specify the exemption relied upon if access to the records are denied.

The effective date of these proposed regulatory changes is July 1, 2010, which is the effective date of the legislative change. **Staff requests the Board's final approval of the proposed amendment. No comments were received during the comment period.**

Chapter 38 Access to Public Records under Mississippi Public Records Act of 1983

100 Purpose

The purpose of this regulation is to outline the provisions under which the Public Employees' Retirement System of Mississippi (PERS) must respond to requests for information subject to the Mississippi Public Records Act of 1983.

101 General Provisions

The following procedures are adopted as provided under the Mississippi Public Records Act of 1983, Chapter 424, Laws of 1983 (hereinafter referred to as the Public Records Act), and take effect thirty (30) days after adoption by the PERS Board of Trustees.

1. DEFINITIONS

The following terms have been defined for purposes of this policy:

- a. Public body: A public body is defined as "any department, bureau, division, council, commission, committee, subcommittee, board, agency, and any other entity of the state or a political subdivision thereof, and any municipal corporation and any other entity created by the Constitution or by law, executive order, ordinance or resolution." Within the meaning of this regulation, the term 'entity' shall not be construed to include individuals employed by a public body or any appointed or elected public official.
- b. Public records: Public records are defined 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."
- c. Exempt Records: Those records exempt from disclosure under the Public Records Act or other provision of the law.
- d. Non-exempt records: Those records which are not exempt from disclosure under the Public Records Act or other provision of the law.
- e. Working day: A working day is any day other than a weekend, State holiday, or a day which by executive order an agency is authorized to be closed.
- f. Fees: By statute, charges are made on a cost-recovery basis. Any person who desires copies of a public record as defined herein may be charged the actual cost per page of each mechanically reproduced copy. Copies of pages printed on both sides (front and back) shall be considered as two pages.
 - (i) If the searching, reviewing, or duplicating of documents or the separating of non-exempt material from documents, etc., containing exempt material requires more than one-quarter hour of work, the requesting party may be charged for the work time above one-quarter

hour in addition to a mechanical reproduction charge of twenty-five cents (\$.25) per page for any copies desired. The charge, if any, for the hours shall be based upon the hourly salary of the lowest paid employee qualified and available to do the job.

- (ii) In the event the public record is available in computer files and can be obtained through computer use, the requesting party may be charged the cost for the computer use, including programming time and actual computer time as well as any other costs incurred. This charge, if any, will be determined by PERS.
- (iii) Requests for any information from records which are stored off site will be subject to additional actual costs as incurred in retrieving such information from, and returning information to, storage.
- (iv) Mailing costs calculated at the applicable United States Postal Service rates shall be charged where appropriate. The cost of mailing a notice to third parties via certified mail, return receipt requested, shall be charged to persons requesting the public records. Actual costs for shipment by other than United States Postal Service shall be charged to the person requesting the special shipment.
- (v) Fees established by this rule may be waived or reduced upon a determination that such waiver or reduction is in the public interest because furnishing the information is considered as primarily benefiting the general public. Persons seeking such waiver or reduction may be requested to submit a written statement setting forth the intended purpose for which the records are requested or otherwise indicate how disclosure would primarily benefit the public. Determinations regarding waiver or reduction of fees under this provision are solely within the discretion of the PERS.

2. PROCEDURES FOR RECORD REQUESTS

- a. All requests for access to or copies of a public record shall be in writing and shall specify what record is being sought as well as the name, address, and contact information of the individual and/or organization requesting the record. Requests shall be addressed to the Executive Director of the Public Employees' Retirement System of Mississippi. Request forms are available in the PERS office.
- b. PERS shall respond in writing within seven (7) working days from the date of receipt of the request. If PERS is unable to produce the requested record by the seventh working day after receipt of the request, PERS will provide a written explanation to the requestor stating that it will be produced and specifying why the records cannot be produced within the seven-day period. Unless otherwise agreed to, PERS shall provide the requested information within fourteen (14) working days of receipt of the original request. Requests for information in storage will be provided within seven (7) days of availability of such records to PERS. Denials shall be in writing and shall contain the specific exemption relied upon for the denial. Copies of all denials shall be maintained on file by PERS for not less than three years from the date denial is made.

- c. Access to non-exempt records will be allowed in the PERS office during regular business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays, in a manner and to the extent that such access does not interfere with the normal business operations of PERS.
- d. If any public record which is held to be exempt from disclosure contains material which is not exempt, PERS shall separate or redact the exempt material and make the non-exempt material available for examination and/or copying.
- e. When fees are appropriate as specified in Section 101.1 of this regulation, the fees must be paid prior to PERS' compliance with the request. Cash, money orders, cashier's checks, personal or company checks will be accepted in payment for fees under Section 101.1. Payment by personal or company check will be accepted subject to clearance within seven (7) working days.
- f. Non-exempt records furnished to PERS by third parties which are not public bodies as defined in the Public Records Act, but which contain trade secrets or confidential commercial or financial information will not be released until notice to the third parties has been given. The records shall be released in seven (7) days from expiration of the time as provided in 101.3, unless the third party obtains a court order protecting the records as confidential.
- g. The Executive Director of PERS or his or her designee has the authority to specify the mode, manner, time and place of access.

3. EXEMPT RECORDS

Any record expressly exempt from the Records Act, or any record specifically declared to be confidential or privileged by any Mississippi statute, case law, or constitutional provision, shall not be submitted to mandatory inspection and copying. Those records which are specifically exempt by statute and which fall within the possession of PERS include, but are not limited to, the following:

- a. The name, address or contents of any individual member records without the prior written consent of the individual to whom the record pertains;
- b. Personnel records and applications for employment, except those which may be released to the person who made the application or with the prior written consent of the person who made the application. This shall not be construed to prohibit the disclosure of the following information about employees: name, date of employment, length of employment, qualifications, and salary;
- c. Test questions and answers which are to be used in employment examinations;
- d. Letters of recommendation respecting any application for employment;
- e. Test questions and answers which are used in future academic examinations;
- f. Letters of recommendation regarding admission to any educational agency or institution;

- g. Records in PERS possession which represent and constitute the work product of any attorney representing PERS and which are related to litigation made by or against PERS or any of the retirement programs administered by the Board of Trustees of PERS or in anticipation of prospective litigation, including all communications between such attorney made in the course of an attorney/client relationship; and,
- h. Appraisal information which concerns the sale or purchase of real or personal property for public purposes prior to public announcement of the purchase or sale, where the release of such records would have a detrimental effect on such sale or purchase.
- i. Records in PERS possession which would disclose information about any individual's tax payments or status.
- j. Documentary material or data made or received by PERS which consists of trade secrets or commercial or financial information that relates to PERS if the disclosure of the material or data is likely to impair PERS' ability to obtain such information in the future, or is likely to cause substantial harm to the competitive position of the person or entity from whom the information was obtained.

Records furnished to PERS by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential. For the purpose of providing advance notice to submitters of trade secret or confidential commercial or financial information, which is included in records furnished by PERS by another party, thirty (30) days from the submitter's receipt of written notice shall be deemed a reasonable time for the disclosure of the requested records in the absence of a court order to the contrary.

(History: Adopted October 22, 1991; reformatted August 1, 2007; amended effective July 1, 2010)

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- b. Public records: Public records are defined 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."
- c. Exempt Records: Those records exempt from disclosure under the Public Records Act or other provision of the law.
- d. Non-exempt records: Those records which are not exempt from disclosure under the Public Records Act or other provision of the law.
- e. Working day: A working day is any day other than a weekend, State holiday, or a day which by executive order an agency is authorized to be closed.
- f. Fees: By statute, charges are made on a cost-recovery basis. Any person who desires copies of a public record as defined herein ~~shall~~ may be charged the actual cost per page of each mechanically reproduced copy. Copies of pages printed on both sides (front and back) shall be considered as two pages. ~~This fee is for the cost of searching, reviewing, and duplicating the public record.~~
 - (i) ~~However, if~~ the searching, reviewing, or duplicating of documents or the separating of non-exempt material from documents, etc., containing exempt material requires more than one-quarter hour of work, ~~then~~ the

requesting party ~~shall~~ may be charged for the work time above one-quarter hour in addition to a mechanical reproduction charge of twenty-five cents (\$.25) per page for any copies desired. The charge, if any, for the hours shall be based upon the hourly salary of the lowest paid employee of the Public Employees' Retirement System (~~hereinafter referred to as the~~ PERS) qualified and available to do the job.

- (ii) In the event the public record is available in computer files and can be obtained through computer use, ~~then~~ the requesting party ~~must pay~~ may be charged the ~~charge~~ cost for the computer use, including programming time and actual computer time as well as any other costs incurred. This charge, if any, will be determined by PERS.
- (iii) Requests for any information from records which are stored off site, will be subject to additional actual costs as incurred in retrieving such information from, and returning information to, storage.
- (iv) Mailing costs calculated at the applicable United States Postal Service rates shall be charged where appropriate. The cost of mailing a notice to third parties via certified mail, return receipt requested, shall be charged to persons requesting the public records. Actual costs for shipment by other than United States Postal Service shall be charged to the person requesting the special shipment.
- (v) Fees established by this rule may be waived or reduced upon a determination that such waiver or reduction is in the public interest because furnishing the information is considered as primarily benefiting the general public. Persons seeking such waiver or reduction may be requested to submit a written statement setting forth the intended purpose for which the records are requested or otherwise indicate how disclosure would primarily benefit the public. Determinations regarding waiver or reduction of fees under this provision are solely within the discretion of the ~~Public Employees' Retirement System~~ PERS.

2. PROCEDURES FOR RECORD REQUESTS

- a. All requests for access to or copies of a public record shall be in writing and shall specify what record is being sought as well as the name, ~~and~~ address, and contact information of the individual and/or organization requesting the record. Requests shall be addressed to the Executive Director of the Public Employees' Retirement System of Mississippi. Request forms are available in the PERS office ~~of the Public Employees' Retirement System~~.
- b. ~~The~~ PERS shall respond in writing within ~~fourteen (14)~~ seven (7) working days from the date of receipt of the request. If PERS is unable to produce the requested record by the seventh working day after receipt of the request, PERS will provide a written explanation to the requestor stating that it will be produced and specifying why the records cannot be produced within the seven-day period. Unless otherwise agreed to, PERS shall provide the requested information within fourteen (14) working days of receipt of the original request. Requests for information in storage will be provided within ~~14~~ seven (7) days of availability of such records to

PERS. Denials shall be in writing and shall contain the specific ~~reasons~~ exemption relied upon for the denial. Copies of all denials shall be maintained on file by PERS for not less than three years from the date denial is made.

- c. Access to non-exempt records will be allowed in the PERS office during regular business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays, in a manner and to the extent that such access does not interfere with the normal business operations of PERS.
- d. If any public record which is held to be exempt from disclosure contains material which is not exempt, PERS shall separate or redact the exempt material and make the non-exempt material available for examination and/or copying.
- e. When fees are appropriate as specified in Section ~~¶~~ 101.1 of this regulation, the fees must be paid prior to PERS' compliance with the request. Cash, money orders, cashier's checks, personal or company checks will be accepted in payment for fees under Section ~~¶~~ 101.1. Payment by personal or company check will be accepted subject to clearance within ~~fourteen (14)~~ seven (7) working days.
- f. Non-exempt records furnished to PERS by third parties which are not public bodies as defined in the Public Records Act, but which contain trade secrets or confidential commercial or financial information will not be released until notice to the third parties has been given. The records shall be released in ~~fourteen (14)~~ seven (7) days from expiration of the time as provided in ~~§~~ 101.3, unless the third party obtains a court order protecting the records as confidential.
- g. The Executive Director of PERS or his or her designee has the authority to specify the mode, manner, time and place of access.

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Any record expressly exempt from the Records Act, or any record specifically declared to be confidential or privileged by any Mississippi statute, case law, or constitutional provision, shall not be submitted to mandatory inspection and copying. Those records which are specifically exempt by statute and which fall within the ~~jurisdiction~~ possession of PERS include, but are not limited to, the following:

- a. The name, address or contents of any individual member records without the prior written consent of the individual to whom the record pertains;
- b. Personnel records and applications for employment, except those which may be released to the person who made the application or with the prior written consent of the person who made the application. This shall not be construed to prohibit the disclosure of the following information about employees: name, date of employment, length of employment, qualifications, and salary;
- c. Test questions and answers which are to be used in employment examinations;
- d. Letters of recommendation respecting any application for employment;

- e. Test questions and answers which are used in future academic examinations;
- f. Letters of recommendation regarding admission to any educational agency or institution;
- g. Records in PERS possession which represent and constitute the work product of any attorney representing PERS and which are related to litigation made by or against ~~the~~ PERS or any of the retirement programs administered by the Board of Trustees of ~~the~~ PERS or in anticipation of prospective litigation, including all communications between such attorney made in the course of an attorney/client relationship; and,
- h. Appraisal information which concerns the sale or purchase of real or personal property for public purposes prior to public announcement of the purchase or sale, where the release of such records would have a detrimental effect on such sale or purchase. ~~For the purpose of providing advance notice to submitters of trade secret or confidential commercial or financial information, which is included in records furnished PERS by another party, twenty five (25) days from the submitter's receipt of written notice shall be deemed a reasonable time for the disclosure of the requested records in the absence of a court order to the contrary.~~
- i. Records in PERS possession which would give disclose information about any individual's tax payments or status.
- j. ~~Financial and commercial information that an individual or business is required by law to submit to a governmental agency, except as provided by law.~~
- j. Documentary material or data made or received by PERS which consists of trade secrets or commercial or financial information that relates to PERS if the disclosure of the material or data is likely to impair PERS' ability to obtain such information in the future, or is likely to cause substantial harm to the competitive position of the person or entity from whom the information was obtained.

Records furnished to PERS by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential. For the purpose of providing advance notice to submitters of trade secret or confidential commercial or financial information, which is included in records furnished by PERS by another party, ~~twenty five (25)~~ thirty (30) days from the submitter's receipt of written notice shall be deemed a reasonable time for the disclosure of the requested records in the absence of a court order to the contrary.

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