019-010 ITS Public Records Policy and Procedures

Public Records Policy

Public Records Procedures

Public Records Request Form

ITS Public Records Policy

1. Statutory Authority and Purpose.

(a) Introduction

The Mississippi Department of Information Technology Services (ITS) is the state agency created by Section 25-53-1 et seq., Mississippi Code of 1972, to maximize the use and benefit of information technology by promoting full cooperation, coordination, cohesive planning, and maximum compatibility of technology among all state agencies and institutions of higher learning. ITS' central office is located in the Robert G. Clark Building, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201.

These public records procedures are promulgated by ITS in compliance with the Mississippi Public Records Act of 1983, Mississippi Code Section 25-61-1, et seq.

"It is the policy of the Legislature that public records must be available for inspection by any person unless otherwise provided by this act. 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." Section 25-61-1, Miss. Code of 1972.

"[A]ll public records are hereby declared to be public property, and any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of a public body in accordance with reasonable written procedures adopted by the public body concerning the cost, time, place and method of access, and public notice of the procedures shall be given by the public body." Section 25-61-5, Miss. Code of 1972.

The act defines "public record" to include "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." Section 25-61-3(b).

The purpose of these rules is to establish the guidelines and procedures ITS will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of ITS and establish processes for both requestors and ITS staff that are designed to best assist members of the public in obtaining such access.

The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. Because the purpose of the act is to allow people to be informed about governmental decisions (and therefore help keep government accountable) while at the same time recognizing certain exemptions, it should not be used to obtain records containing purely personal information that has no bearing on the conduct of government.

The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, ITS will be guided by the provisions of the act describing its purposes and interpretation.

(b) Definitions

i. "Custom Request" means any public records request for information other than what is contained in the list of Standard Documents as specified in the ITS Public Records Request Procedures Attachment to this document.

ii. "Exempt Record" means a record held by a public body that may contain information that impacts the rights of others and has been excluded from disclosure under the Mississippi Public Records Act.

iii. "Initial Fee" means the evaluation and research payment in the amount specified in the ITS Public Records Request Procedures Attachment to this document. This fee is due with the submission of Public Records Requests for Custom Requests and is applied toward the actual cost of filling the Public Records Request.

iv. "Standard Document" means any public record listed in the ITS Public Records Request Procedures Attachment to this document and available for immediate release at either no cost or a fixed charge.

v. "Standard Document Fee" means the fixed cost for a particular Standard Document, as shown in the ITS Public Records Request Procedures Attachment to this document.

vi. "Working Days" means Monday through Friday but excludes State recognized holidays mandated by Mississippi Code Annotated, Section 3-3-7 (1972), other holidays identified in holiday proclamations published or distributed by the Mississippi Secretary of State, and any other day the offices of state agencies are officially closed for business.

2. ITS Public Records Officer and Contact Information

(a) Any person wishing to request access to public records of ITS, or seeking assistance in making such a request should contact the Public Records Officer of ITS:

Public Records Officer
Mississippi Department of Information Technology Services
301 North Lamar Street, Suite 508, Jackson, MS 39201
Phone: 601-359-1395
Fax: 601-354-6016
Email: projects@its.ms.gov

Information is also available at the ITS web site at www.its.ms.gov.

(b) The ITS Public Records Officer will oversee compliance with the act but other ITS staff members may process the request. Therefore, these rules will refer to the Public Records Officer "or designee." The Public Records Officer or designee and ITS will provide the "fullest assistance" to requestors; ensure that public records are protected from damage or disorganization; and prevent the fulfilling of public records requests from causing excessive interference with essential functions of ITS. All references in this policy to "Public Records Officer" should be construed as "Public Records Officer or designee."

3. Availability of public records.

(a) **Records available through ITS website.** Many public records maintained by ITS are available for access and/or download at no charge via the ITS website, www.its.ms.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a public records request. Requestors without access to the internet may request to use a computer at the ITS offices for this purpose.

(b) **Hours for inspection of records.** With prior written notice to the Public Records Officer, public records are available for inspection and copying during normal business hours of ITS, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding state holidays. Records must be

inspected at the offices of ITS with an ITS employee present.

(c) **Organization of records.** ITS will maintain its records in a reasonably organized manner. ITS will take reasonable actions to protect records from damage and disorganization. A requestor shall not take ITS records from ITS offices without the permission of the Public Records Officer.

(d) **Making a request for public records.**

(i) Any person wishing to inspect or copy any public records maintained by ITS, or to request copies of such information from ITS, should make the request in writing on the ITS Public Records Request Form, or by letter addressed to the ITS Public Records Officer and include the following information:

Name of requestor;

Address of requestor;

Other contact information, including telephone number and e-mail address;

Identification of the public records adequate for the Public Records Officer to locate the records;

The date of the request; and

A check for the appropriate amount, as specified in the ITS Public Records Request Procedures Attachment to this document.

(ii) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records at the time they are copied. Standard photocopies will be provided at the per page cost specified in the ITS Public Records Request Procedures Attachment to this document.

(iii) A Public Records Request Form is available for use by requestors at the office of the Public Records Officer. Word and pdf versions of this document are attached to this policy. Because an Initial Payment must accompany the request, verbal, telephone, email, and fax requests cannot be accepted.

(e) Obligations of ITS.

(i) ITS has a duty to promptly provide access to all nonexempt public records. ITS will treat all requestors similarly, regardless of the purpose of the request or the identity of the requestor.

(ii) Public records used or created by ITS will be retained according to retention schedules approved by the Mississippi Department of Archives and History. These schedules are specific to ITS and to the type and contents of the public record. The destruction of ITS public records is governed by the retention schedules.

(iii) ITS will not destroy any public record, even if it is eligible to be lawfully destroyed under a retention schedule, if a public records request has been made for that record. ITS will retain the record until the Public Records Request has been resolved.

(iv) ITS will use technology to provide public records in electronic form where possible.

(v) ITS will conduct an objectively reasonable search for responsive records.

(vi) ITS is not obligated to create a new record to satisfy a public records request.

(f) Obligations of Requestor

(i) A requestor must request an identifiable record or class of records. An "identifiable records" is one the ITS staff can reasonably locate. The Public Records Act does not allow the requestor to search through ITS files for records that cannot be reasonably identified or described to ITS.

(ii) A requestor must be as specific as possible in making the request. Requests using inexact and comprehensive phrases such as "all records relating to" a topic, requests requiring legal research, or requests asking for information rather than records will be clarified or denied by

ITS.

4. Processing of Public Records Requests.

(a) **Providing access.** ITS acknowledges that "providing access to public records is a duty" and that "any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record" in accordance with these policies (Mississippi Code Sections 25-61-1 and 25-61-5). The Public Records Officer will process requests in the order allowing the most requests to be processed in the most efficient manner.

(b) **Acknowledging receipt of request.** Within seven (7) Working Days of receipt of the request, the Public Records Officer will do one or more of the following:

(i) Make the records available for inspection or copying; or

(ii) If copies are requested and full payment is received in accordance with the ITS Public Records Request Procedures Attachment to this document, send the copies to the requestor; or

(iii) Acknowledge the receipt of the request and provide a reasonable estimate of the time and cost that will be required to make the records available; or

(iv) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone, with written follow-up. The Public Records Officer may revise the estimate of when records will be available; or

(v) Deny the request, with documentation to the requestor as to the reason for denial.

(c) **Consequences of failure to respond.** If ITS does not respond in writing within seven (7) Working Days of receipt of the request for disclosure, the requestor should consider contacting the Public Records Officer to determine the reason for the failure to respond.

(d) **Protecting rights of others.** In the event the requested records contain information that may affect rights of others and may be exempt from disclosure, the Public Records Officer will, prior to providing the records, give notice to such others whose rights may be affected by the disclosure ("Third Party Notice"). Such notice will be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request. See Section 7 of this policy for additional information on Third Party Information.

(e) **Denial of Request.** ITS may deny a Public Records Request for the following reasons:

(i) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If ITS believes that a record is exempt from disclosure and should be withheld, the Public Records Officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the Public Records Officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted. See Section 6 for additional information on exemptions.

(ii) **Record does not exist or ITS does not have the record**. ITS must only provide access to public records in existence at the time of the request. If a public record is created or comes into the possession of ITS after the request is received by ITS, that record will not be provided. The requestor must make a new request to obtain subsequently created public records. Sometimes more than one public body holds the same record. When more than one public body holds a record, and a requestor makes a request to ITS, ITS will provide access to the record it holds regardless of its availability from another public body.

(f) **Inspection of records.**

(i) Consistent with other demands and with prior written notice by the requestor to the Public Records Officer, ITS shall promptly provide space to inspect nonexempt public records with an ITS employee present. No member of the public may remove a document from the viewing

area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes ITS to copy and must provide payment for copies at the time copies are made.

(ii) The requestor must claim or review the assembled records within ten (10) Working Days of ITS' notification to him or her that the records are available for inspection or copying. ITS will notify the requestor in writing of this requirement and inform the requestor that he or she should contact ITS to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the ten (10) Working Day period or make other arrangements, ITS may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(iii) **Providing copies of records.** After inspection is complete, the Public Records Officer shall make the requested copies or arrange for copying. The requestor must provide payment for copies at the time copies are made. Alternately, the requestor may ask that ITS provide the requested information directly to the requestor, in printed or electronic form, without prior inspection of the information by the requestor.

(iv) **Providing records in installments.** When the request is for a large number of records, the Public Records Officer will provide access for inspection and/or copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within ten (10) Working Days, the requestor fails to inspect the entire set of records or one or more of the installments or fails to make payment as required, the Public Records Officer may stop searching for the remaining records and close the request.

(v) **Completion of inspection.** When the inspection of the requested records is complete and/or all requested copies are provided to the requestor, the Public Records Officer will indicate that ITS has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(vi) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or to make payment as required, the Public Records Officer will close the request and indicate to the requestor that ITS has closed the request.

(vii) **Later discovered documents.** If, after ITS has informed the requestor that it has provided all available records, ITS becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

5. Processing of public records requests: Electronic records.

(a) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(b) **Providing electronic records.** When a requestor requests records in an electronic format, the Public Records Officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by ITS and is generally commercially available, or in a format that is reasonably translatable from the format in which ITS keeps the record. Costs for providing electronic records are governed by the ITS Public Records Request Procedures Attachment to this document. ITS will produce records that can be located based on a description provided by the requestor, using standard search features in ITS' current software.

(c) **Customized access to data bases.** With the consent of the requestor, ITS may provide customized access if the record is not reasonably locatable or not reasonably translatable into the format requested. ITS may charge the actual cost for such customized access.

6. Exemptions.

(a) The Mississippi Public Records Act, as well as other statues and court decisions, provides that a number of types of documents are exempt from public inspection and copying. In

addition, other statutes or rules of law, such as various privacy restrictions, may prohibit disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by ITS for inspection and copying. This list is provided for informational purposes only and may not be all-inclusive:

Academic records exempt from public access, see § 37-11-51.

Appraisal records exempt from access, see § 31-1-27.

Archaeological records exempt from public access, see § 39-7-41.

Attorney work product, examination, exemption, see § 25-1-102.

Birth Defects Registry, see § 41-21-205.

Bureau of vital statistics, access to records, see § 41-57-2.

Charitable organizations, registration information, exemption from public access, see § 79-11-527.

Concealed pistols or revolvers, licenses to carry, records, exemption, see § 45-9-101.

Confidentiality, ambulatory surgical facilities, see § 41-75-19.

Defendants likely to flee or physically harm themselves or others, see § 41- 32-7.

Environmental self-evaluation reports, public records act, exemption, see § 49-2-71.

Hospital records, Mississippi Public Records Act exemption, see § 41-9-68.

Individual tax records in possession of public body, exemption from public access requirements, see § 27-3-77.

Insurance and insurance companies, risk based capital level requirements, reports, see § 83-5-415.

Judicial records, public access, exemption, see § 9-1-38.

Jury records exempt from public records provisions, see § 13-5-97.

Licensure application and examination records. exemption from Public Records Act, see § 73-52-1.

Medical examiner, records and reports, see § 41-61-63.

Personnel files exempt from examination, see § 25-1-100.

Public records and trade secrets, proprietary commercial and financial information, exemption from public access, see § 79-23-1.

Workers' compensation, access to records, see § 71-3-66.

(b) ITS will describe why each withheld record or redacted portion of a record is exempt from disclosure.

7. Third Party Information

(a) Documents submitted to ITS by commercial entities in conjunction with the procurement process and with enterprise technology initiatives often contain trade secrets or confidential commercial or financial information subject to the protection of the Public Records Act. Upon request to inspect or copy any third-party document , ITS shall notify the person who filed the document ("Third Party"). Ten (10) Working Days after such notice, the document will be made available for public inspection and/or copying unless the Third Party shall have obtained a court order protecting such records as confidential pursuant to Section 25-61-9, Miss. Code of 1972.

(b) The Third Party must prove to the court's satisfaction that the record or portion of the

record is exempt from disclosure and must deliver the court order preventing the release of all or part of the information to ITS prior to the deadline to prevent disclosure of the information. The Third Party must name the requestor as a party to any action to enjoin disclosure.

(c) ITS will not make a determination as to whether a requested record provided by a Third Party contains trade secrets or confidential commercial or financial information. ITS will provide Third Party Notice as outlined above and allow the court to determine if a protective order should be issued.

(d) Documents are frequently produced by ITS that contain specific information obtained directly from a Third Party and, as such, may be subject to Third Party Notice as described above. Examples include, but are not limited to, detailed proposal evaluation documentation; line-item pricing spreadsheets; and contract exhibits containing proprietary vendor information and marked "confidential." In no event, however, will ITS be obligated to provide Third Party Notice prior to the release of ITS-generated documents containing summary-level information or other information as may be required to be made public record as part of the fulfillment of ITS' statutory mission.

(e) All ITS employees are Confidentiality Officers, as defined in Section 25-53-51 of Mississippi Code, and have been duly sworn in accordance with the oath contained therein. Information and data owned by another agency or institution and residing at ITS must not be disclosed by ITS employees, as mandated in the oath taken as Confidentiality Officers. Requests for such data must be made to the originating agency or institution.

8. Costs of providing public records.

(a) **Costs for fulfilling a request.** Section 25-61-7(1), Miss. Code of 1972, reads in part as follows: "Except as provided in subsection (2) of this section, each public body may establish and collect fees reasonably calculated to reimburse it for, and in no case to exceed, the actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records." ITS is a 100% special fund agency and bills by the hour for services provided to customers. Because time spent fulfilling public records requests is time that would otherwise be spent on customer projects, this time will be invoiced at the hourly billing rate of the staff members performing tasks required to fulfill the request. Billing rates are established in compliance with federal cost allocation guidelines. The current range of billing rates for ITS staff is shown in the ITS Public Records Request Procedures Attachment to this document. ITS commits to providing standard information on the Internet at no cost to the requestor and to fulfilling Custom Requests as expeditiously and efficiently as possible. ITS will provide a cost estimate to the requestor prior to the requestor's incurring any charges above those of the initial research fee discussed below.

(b) **Initial Evaluation and Research Fee.** ITS charges an initial fee, in the amount specified in the ITS Public Records Request Procedures Attachment to this document, for every customized public records request . This fee covers the cost of coordinating with the applicable project team to ascertain documents that are available within the scope of the request; reviewing the requested records; determining based on the content of the records whether Third Party Notification must be provided; providing required notifications; and developing a cost estimate and timetable for fulfilling the request. A Custom Public Records Request cannot be processed until this initial fee is received. The initial fee is non-refundable.

(c) **Charges for staff services.** The actual cost of searching for and reviewing the information, providing Third Party Notice if required, copying or scanning, redacting exempt information from public records, and other services required to fulfill the Custom Request, shall be based upon the applicable hourly rate, as described in 8.a. above, which shall be multiplied by the actual time to complete the tasks. If a request requires legal analysis and advice to determine possible exemptions, ITS will include the actual cost of the attorney's time in the cost of fulfilling the request.

(d) **Costs for paper copies.** A requestor may obtain standard black and white photocopies for the amount specified in the ITS Public Records Request Procedures Attachment to this

document.

Before copies can be made and/or provided to the requestor, the requestor must pre-pay all reasonably estimated costs of copying all the records selected by the requestor. ITS will not charge sales tax when it makes copies of public records.

(e) **Costs for electronic records.** The cost of electronic copies of records and/or scanned copies of nonelectronic records shall be the amount specified as the media cost for a CD in the ITS Public Records Request Procedures Attachment to this document. The cost of the scanning process will be calculated at the hourly service rate. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies, such as research and scanning fees.

(f) **Costs of mailing.** ITS will charge actual costs of mailing, including the cost of the shipping container.

(g) **Payment.** Payment may be in the form of a certified check, money order, or corporate check made payable to ITS for the amount specified. No cash or personal checks can be accepted.

9. Review of denials of public records.

(1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the Public Records Officer for a review of that decision. The petition must include a copy of or reasonably identify the written statement by the Public Records Officer or designee denying the request.

(2) **Consideration of petition for review.** The Public Records Officer must promptly provide the petition and any other relevant information to the ITS Executive Director. That person will immediately consider the petition and either affirm or reverse the denial within two (2) Working Days following ITS' receipt of the petition, or within such other time as ITS and the requestor mutually agree to.

(3) **Review by the Ethics Commission.** Pursuant to Section 25-61-13, if ITS denies a requestor access to public records, the requestor may ask the Ethics Commission to review the matter. The Ethics Commission has adopted rules on such requests. They may be found at www.ethics.state.ms.us.

(4) **Judicial review.** Any person whose request for public records was denied may institute a suit in the Chancery Court of Hinds County, seeking to reverse the denial, as set forth in Section 25-61-13.

Attachment: ITS Public Records Request Procedures

NOTE: Please refer to "ITS Public Records Policy" above for the rules and guidelines under which these procedures were developed and are administered.

STEP 1: Requestor submits a written request for the information and includes payment:

a. Use the ITS Public Records Request Form [attached below] or your own format.

b. Include the information requested on the ITS Public Records Request form: Name of requestor; address of requestor; other contact information, including telephone number and e-mail address; identification of the public records adequate for the Public Records Officer to locate the records; and date of the request;

c. Address the request to: ITS Public Records Officer, Mississippi Department of Information Technology Services, 301 North Lamar Street, Suite 508, Jackson, MS 39201.

d. For documents listed on the attached Schedule of Fees under "Standard Documents," each request must be accompanied by payment in the amount specified on the payment schedule.

e. For any Custom Request (i.e. any request for information not included in the list of Standard Documents), the request must be accompanied by payment in the amount of $65 to cover the first hour of staff time involved in evaluation and research of the request. This payment is non-refundable and is applied toward the total actual cost of filling the Public Records Request.

f. Payment must be in the form of a certified check, money order, or corporate check made payable to ITS for the amount specified. No cash or personal checks can be accepted.

g. Please note that, because payment must be submitted with the request, no verbal, telephone, email, or fax requests can be accepted for either standard documents or custom requests.

h. Requests not accompanied by payment in the amount specified for Standard Documents or in the amount of $65 for Custom Requests will be closed within ten (10) Working Days of the date of notification to the requestor, if payment is not received.

i. Frequently requested information, including current Express Products Lists, current and recent RFPs, procurement status and award information, the Procurement Handbook, and vendor information on how to do business with the State, is available free of charge on the ITS website. Requestors are urged to review the website prior to submitting a request. For assistance in locating information on the website, call the Procurement Help Desk, 601-576-HELP (576-4357).

STEP 2: ITS evaluates and researches the request.

a. The ITS Public Records Officer determines whether the request is for a Standard Document or is a Custom Request. For Standard Documents, skip to Step 3.

b. For Custom Requests, the ITS Public Records Officer evaluates the request; coordinates with the ITS project manager for the applicable project to ensure all relevant information is reviewed; researches the project file and other sources to see what information is available and in what format the information is stored; and estimates the effort that will be required to reproduce the information. This research may require the retrieval of files that have been archived or the search of electronic records.

c. The ITS Public Records Officer prepares a schedule and estimated cost for the Public Records Request, based upon the volume of information, the format in which the information is stored, and whether Third Party information has been requested. The Initial Payment covers the first hour of ITS staff time involved in researching the request, retrieving files, preparing the estimate, and providing Third Party Notice. The Initial Payment is non-refundable if the requestor decides not to proceed with the request after receiving the schedule and estimated cost.

STEP 3: ITS provides Standard Document or provides cost estimate for Custom Request

a. Upon receipt of a written request accompanied by the appropriate payment, ITS will

provide the requested **Standard Document** within seven (7) Working Days.

b. For **Custom Requests** accompanied by the appropriate initial payment as described above, ITS will furnish the requestor within seven (7) Working Days a cost estimate and projected schedule for providing the information included in the request.

iii. When payment in the amount of the estimated remaining balance is received from the requestor, ITS will provide the requested information for Customer Requests.

iv. ITS staff will make a good faith effort to provide the requested information within fourteen (14) Working Days. Note, however, that if Third Party Information is requested, additional time will be required to notify the Third Party and to provide this party the opportunity to protect any confidential information. ITS cannot accept payment for the balance of the request until the deadline for obtaining a court order to block release of Third Party Information has passed. (See discussion of Third Party Information in Step 4 below).

STEP 4: ITS provides Third Party Notice as needed.

a. All information and documents produced or received by ITS, including those associated with competitive procurements, may be requested by any business or individual under the ITS Public Records Policy in accordance with these Public Records Procedures. Proposals and information extracted directly from proposals during the evaluation process, as well as certain other documents prepared by vendors and submitted to ITS, will be considered Third Party information and will not be released until notice has been given to the party submitting the information, as described below.

b. When ITS receives a request to release information provided by a Third Party, which may contain trade secrets or confidential commercial or financial information, the owner of this information is notified of the name and address of the party requesting the information and provided a copy of the request.

c. The owner of the information ("Third Party") is given ten (10) Working Days to obtain a court order protecting the information, or portions of the information, as confidential.

d. If the owner of the information seeks a court order, the party seeking the court order must name the requestor as a party to any action to enjoin disclosure.

e. If a court order is delivered to ITS by the deadline protecting all requested information, ITS will notify the requestor that the information is protected and cannot be furnished.

f. If no court order is received by the deadline, or if portions of the requested information are excluded from the court order, ITS will release all information not protected to the requestor once the deadline has passed and payment for the information has been received from the requestor.

STEP 5: Requestor submits payment of remaining balance for Custom Requests.

a. For Custom Requests, ITS will have provided the requestor, as outlined in Steps 2 and 3 above, a cost estimate and schedule for producing and delivering the information requested. Such costs include, but are not limited to, staff time to evaluate and research the request, retrieve any relevant files, organize the information, notify any Third Parties, and produce the information in final form for delivery. The Initial Fee is deducted from the total estimated cost for a net balance due, if any.

b. Requestor remits payment for the remaining balance, if any. Payment must be in the

form of a certified check, money order, or corporate check made payable to ITS for the amount specified. No cash or personal checks can be accepted.

c. Should the actual cost of producing the requested information exceed the estimate provided, ITS notifies the requestor of the additional amount due. The requestor remits the additional amount before ITS provides the information.

STEP 6: ITS provides the information for Custom Requests to the requestor.

a. ITS sends the requested information via U.S. mail, unless the requestor has specified another form of delivery.

b. ITS provides the requested information in pdf format on CD-ROM, unless another format has been specified by the requestor.

c. Once the information has been provided, ITS closes the request.

SUGGESTIONS FOR MINIMIZING COSTS FOR PUBLIC RECORDS REQUESTS:

1. Make the request as specific as possible. The less defined and/or more inclusive the scope of the Public Records Request, the more documents and files have to be searched and evaluated by the ITS staff. For example, wording in requests asking for "all records, papers, documents, messages, correspondence, notes, etc. related to this or similar projects" is extremely open-ended and requires staff to interpret what time-frame, sources of information, and project files are reasonable to research and evaluate. The wider the "net," the greater the effort required, and, thus, the greater the cost to the requestor.

2. Provide information and payment timely. Sometimes the requestor will submit a Public Records Request and then not respond with payment during the required time frame once the schedule and estimate are provided. If the requestor later decides to proceed with the request, ITS staff must again locate the information and develop a new schedule and cost estimate. The requestor must submit a new request with the $65 initial payment.

3. Request information as soon as possible after ITS creates or receives the information. Project files are archived off-site after a reasonable time period. Requests for information on projects for which a contract has been signed for several months are typically more expensive to respond to than requests for information on projects that have been recently awarded.

Schedule of Fees

Standard Documents:	
Vendor information packet	No Charge
Paper copy of an Express Products List	$25
EPL Marketing Report	$25
Paper copy of ITS master mailing list in mailing label format: Includes IT directors, agency heads, and purchasing agents of state agencies, universities, and	No Charge

community colleges	
Printed Copy of RFPs	$25, plus actual cost of reproducing any oversized diagrams or other special attachments
Copy of RFPs on CD in Microsoft Word 2000 format	$25 for Word document; any oversized diagrams or other special attachments will be reproduced on paper or electronically at actual cost
Paper copy of a project contract (excluding confidential exhibits)	$25
Paper copy of Procurement Handbook	$50
Custom Requests and Variable Costs:	
Evaluation & research payment ("Initial Fee"): Due with the submission of Public Records Requests for Custom Requests and is applied toward the actual cost of filling the Public Records Request	$65
Fees for fulfilling Custom Requests, based on the expense categories below:	Quoted individually upon receipt of written request and $65 evaluation and research payment (above).
In-house standard black & white photocopies	$0.15 per page (paper/copier fee)
CD (with .doc, .xls, or .pdf files of requested information)	$5.00 per CD (media fee)
Postage, UPS, Federal Express[1]	Actual cost
Staff time	Actual staff time required to provide all services to fulfill the Public Records Request, including but not limited to researching; providing notifications; and compiling, copying, scanning, and delivering requested information, at staff members' hourly rates ($65 - $80 per hour)
Computer processing	Actual Cost
Temporary agency personnel[1,2]	Actual Cost
Reproduction cost by outside print facility[1]	Actual Cost

[1] ITS may request that payments for outside services be made by the requestor directly to the company providing the services.

[2] ITS reserves the right to use temporary personnel and services, the cost of which will be passed on to the requestor, if sufficient in-house personnel are not available to respond to the request in a timely manner.

PUBLIC RECORDS REQUEST FORM:
/its/procman.nsf/f4ad43bd44ad9d8c86256daa0063e1f0/bb780b5a8360c3138625765d004e4aff/$FILE/public records request form.2.docx/its/procman.nsf/f4ad43bd44ad9d8c86256daa0063e1f0/bb780b5a8360c3138625765d004e4aff/$FILE/public records request form.2.docx

019-010 ITS Public Records Policy and Procedures

Public Records Policy

Public Records Procedures

Public Records Request Form

ITS Public Records Policy

1. Statutory Authority and Purpose.

(a) Introduction

The Mississippi Department of Information Technology Services (ITS) is the state agency created by Section 25-53-1 et seq., Mississippi Code of 1972, to maximize the use and benefit of information technology by promoting full cooperation, coordination, cohesive planning, and maximum compatibility of technology among all state agencies and institutions of higher learning. ITS' central office is located in the Robert G. Clark Building, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201.

These public records procedures are promulgated by ITS in compliance with the Mississippi Public Records Act of 1983, Mississippi Code Section 25-61-1, et seq.

"It is the policy of the Legislature that public records must be available for inspection by any person unless otherwise provided by this act. 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." Section 25-61-1, Miss. Code of 1972.

"[A]ll public records are hereby declared to be public property, and any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of a public body in accordance with reasonable written procedures adopted by the public body concerning the cost, time, place and method of access, and public notice of the procedures shall be given by the public body." Section 25-61-5, Miss. Code of 1972.

The act defines "public record" to include "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." Section 25-61-3(b).

The purpose of these rules is to establish the guidelines and procedures ITS will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of ITS and establish processes for both requestors and ITS staff that are designed to best assist members of the public in obtaining such access.

The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. Because the purpose of the act is to allow people to be informed about governmental decisions (and therefore help keep government accountable) while at the same time recognizing certain exemptions, it should not be used to obtain records containing purely personal information that has no bearing on the conduct of government.

The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, ITS will be guided by the provisions of the act describing its purposes and interpretation.

(b) Definitions

i. "Custom Request" means any public records request for information other than what is contained in the list of Standard Documents as specified in the ITS Public Records Request Procedures Attachment to this document.

ii. "Exempt Record" means a record held by a public body that may contain information that impacts the rights of others and has been excluded from disclosure under the Mississippi Public Records Act.

iii. "Initial Fee" means the evaluation and research payment in the amount specified in the ITS Public Records Request Procedures Attachment to this document. This fee is due with the submission of Public Records Requests for Custom Requests and is applied toward the actual cost of filling the Public Records Request.

iv. "Standard Document" means any public record listed in the ITS Public Records Request Procedures Attachment to this document and available for immediate release at either no cost or a fixed charge.

v. "Standard Document Fee" means the fixed cost for a particular Standard Document, as shown in the ITS Public Records Request Procedures Attachment to this document.

vi. "Working Days" means Monday through Friday but excludes State recognized holidays mandated by Mississippi Code Annotated, Section 3-3-7 (1972), other holidays identified in holiday proclamations published or distributed by the Mississippi Secretary of State, and any other day the offices of state agencies are officially closed for business.

2. ITS Public Records Officer and Contact Information

(a) Any person wishing to request access to public records of ITS, or seeking assistance in making such a request should contact the Public Records Officer of ITS:

Public Records Officer
Mississippi Department of Information Technology Services
301 North Lamar Street, Suite 508, Jackson, MS 39201
Phone: 601-359-1395
Fax: 601-354-6016
Email: projects@its.ms.gov

Information is also available at the ITS web site at www.its.ms.gov.

(b) The ITS Public Records Officer will oversee compliance with the act but other ITS staff members may process the request. Therefore, these rules will refer to the Public Records Officer "or designee." The Public Records Officer or designee and ITS will provide the "fullest assistance" to requestors; ensure that public records are protected from damage or disorganization; and prevent the fulfilling of public records requests from causing excessive interference with essential functions of ITS. All references in this policy to "Public Records Officer" should be construed as "Public Records Officer or designee."

3. Availability of public records.

(a) **Records available through ITS website.** Many public records maintained by ITS are available for access and/or download at no charge via the ITS website, www.its.ms.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a public records request. Requestors without access to the internet may request to use a computer at the ITS offices for this purpose.

(b) **Hours for inspection of records.** With prior written notice to the Public Records Officer, public records are available for inspection and copying during normal business hours of ITS, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding state holidays. Records must be

inspected at the offices of ITS with an ITS employee present.

(c) **Organization of records.** ITS will maintain its records in a reasonably organized manner. ITS will take reasonable actions to protect records from damage and disorganization. A requestor shall not take ITS records from ITS offices without the permission of the Public Records Officer.

(d) **Making a request for public records.**

(i) Any person wishing to inspect or copy any public records maintained by ITS, or to request copies of such information from ITS, should make the request in writing on the ITS Public Records Request Form, or by letter addressed to the ITS Public Records Officer and include the following information:

Name of requestor;

Address of requestor;

Other contact information, including telephone number and e-mail address;

Identification of the public records adequate for the Public Records Officer to locate the records;

The date of the request; and

A check for the appropriate amount, as specified in the ITS Public Records Request Procedures Attachment to this document.

(ii) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records at the time they are copied. Standard photocopies will be provided at the per page cost specified in the ITS Public Records Request Procedures Attachment to this document.

(iii) A Public Records Request Form is available for use by requestors at the office of the Public Records Officer. Word and pdf versions of this document are attached to this policy. Because an Initial Payment must accompany the request, verbal, telephone, email, and fax requests cannot be accepted.

(e) Obligations of ITS.

(i) ITS has a duty to promptly provide access to all nonexempt public records. ITS will treat all requestors similarly, regardless of the purpose of the request or the identity of the requestor.

(ii) Public records used or created by ITS will be retained according to retention schedules approved by the Mississippi Department of Archives and History. These schedules are specific to ITS and to the type and contents of the public record. The destruction of ITS public records is governed by the retention schedules.

(iii) ITS will not destroy any public record, even if it is eligible to be lawfully destroyed under a retention schedule, if a public records request has been made for that record. ITS will retain the record until the Public Records Request has been resolved.

(iv) ITS will use technology to provide public records in electronic form where possible.

(v) ITS will conduct an objectively reasonable search for responsive records.

(vi) ITS is not obligated to create a new record to satisfy a public records request.

(f) Obligations of Requestor

(i) A requestor must request an identifiable record or class of records. An "identifiable records" is one the ITS staff can reasonably locate. The Public Records Act does not allow the requestor to search through ITS files for records that cannot be reasonably identified or described to ITS.

(ii) A requestor must be as specific as possible in making the request. Requests using inexact and comprehensive phrases such as "all records relating to" a topic, requests requiring legal research, or requests asking for information rather than records will be clarified or denied by

ITS.

4. Processing of Public Records Requests.

(a) **Providing access.** ITS acknowledges that "providing access to public records is a duty" and that "any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record" in accordance with these policies (Mississippi Code Sections 25-61-1 and 25-61-5). The Public Records Officer will process requests in the order allowing the most requests to be processed in the most efficient manner.

(b) **Acknowledging receipt of request.** Within seven (7) Working Days of receipt of the request, the Public Records Officer will do one or more of the following:

(i) Make the records available for inspection or copying; or

(ii) If copies are requested and full payment is received in accordance with the ITS Public Records Request Procedures Attachment to this document, send the copies to the requestor; or

(iii) Acknowledge the receipt of the request and provide a reasonable estimate of the time and cost that will be required to make the records available; or

(iv) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone, with written follow-up. The Public Records Officer may revise the estimate of when records will be available; or

(v) Deny the request, with documentation to the requestor as to the reason for denial.

(c) **Consequences of failure to respond.** If ITS does not respond in writing within seven (7) Working Days of receipt of the request for disclosure, the requestor should consider contacting the Public Records Officer to determine the reason for the failure to respond.

(d) **Protecting rights of others.** In the event the requested records contain information that may affect rights of others and may be exempt from disclosure, the Public Records Officer will, prior to providing the records, give notice to such others whose rights may be affected by the disclosure ("Third Party Notice"). Such notice will be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request. See Section 7 of this policy for additional information on Third Party Information.

(e) **Denial of Request.** ITS may deny a Public Records Request for the following reasons:

(i) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If ITS believes that a record is exempt from disclosure and should be withheld, the Public Records Officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the Public Records Officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted. See Section 6 for additional information on exemptions.

(ii) **Record does not exist or ITS does not have the record**. ITS must only provide access to public records in existence at the time of the request. If a public record is created or comes into the possession of ITS after the request is received by ITS, that record will not be provided. The requestor must make a new request to obtain subsequently created public records. Sometimes more than one public body holds the same record. When more than one public body holds a record, and a requestor makes a request to ITS, ITS will provide access to the record it holds regardless of its availability from another public body.

(f) **Inspection of records.**

(i) Consistent with other demands and with prior written notice by the requestor to the Public Records Officer, ITS shall promptly provide space to inspect nonexempt public records with an ITS employee present. No member of the public may remove a document from the viewing

area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes ITS to copy and must provide payment for copies at the time copies are made.

(ii) The requestor must claim or review the assembled records within ten (10) Working Days of ITS' notification to him or her that the records are available for inspection or copying. ITS will notify the requestor in writing of this requirement and inform the requestor that he or she should contact ITS to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the ten (10) Working Day period or make other arrangements, ITS may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(iii) **Providing copies of records.** After inspection is complete, the Public Records Officer shall make the requested copies or arrange for copying. The requestor must provide payment for copies at the time copies are made. Alternately, the requestor may ask that ITS provide the requested information directly to the requestor, in printed or electronic form, without prior inspection of the information by the requestor.

(iv) **Providing records in installments.** When the request is for a large number of records, the Public Records Officer will provide access for inspection and/or copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within ten (10) Working Days, the requestor fails to inspect the entire set of records or one or more of the installments or fails to make payment as required, the Public Records Officer may stop searching for the remaining records and close the request.

(v) **Completion of inspection.** When the inspection of the requested records is complete and/or all requested copies are provided to the requestor, the Public Records Officer will indicate that ITS has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(vi) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or to make payment as required, the Public Records Officer will close the request and indicate to the requestor that ITS has closed the request.

(vii) **Later discovered documents.** If, after ITS has informed the requestor that it has provided all available records, ITS becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

5. Processing of public records requests: Electronic records.

(a) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(b) **Providing electronic records.** When a requestor requests records in an electronic format, the Public Records Officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by ITS and is generally commercially available, or in a format that is reasonably translatable from the format in which ITS keeps the record. Costs for providing electronic records are governed by the ITS Public Records Request Procedures Attachment to this document. ITS will produce records that can be located based on a description provided by the requestor, using standard search features in ITS' current software.

(c) **Customized access to data bases.** With the consent of the requestor, ITS may provide customized access if the record is not reasonably locatable or not reasonably translatable into the format requested. ITS may charge the actual cost for such customized access.

6. Exemptions.

(a) The Mississippi Public Records Act, as well as other statues and court decisions, provides that a number of types of documents are exempt from public inspection and copying. In

addition, other statutes or rules of law, such as various privacy restrictions, may prohibit disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by ITS for inspection and copying. This list is provided for informational purposes only and may not be all-inclusive:

Academic records exempt from public access, see § 37-11-51.

Appraisal records exempt from access, see § 31-1-27.

Archaeological records exempt from public access, see § 39-7-41.

Attorney work product, examination, exemption, see § 25-1-102.

Birth Defects Registry, see § 41-21-205.

Bureau of vital statistics, access to records, see § 41-57-2.

Charitable organizations, registration information, exemption from public access, see § 79-11-527.

Concealed pistols or revolvers, licenses to carry, records, exemption, see § 45-9-101.

Confidentiality, ambulatory surgical facilities, see § 41-75-19.

Defendants likely to flee or physically harm themselves or others, see § 41- 32-7.

Environmental self-evaluation reports, public records act, exemption, see § 49-2-71.

Hospital records, Mississippi Public Records Act exemption, see § 41-9-68.

Individual tax records in possession of public body, exemption from public access requirements, see § 27-3-77.

Insurance and insurance companies, risk based capital level requirements, reports, see § 83-5-415.

Judicial records, public access, exemption, see § 9-1-38.

Jury records exempt from public records provisions, see § 13-5-97.

Licensure application and examination records. exemption from Public Records Act, see § 73-52-1.

Medical examiner, records and reports, see § 41-61-63.

Personnel files exempt from examination, see § 25-1-100.

Public records and trade secrets, proprietary commercial and financial information, exemption from public access, see § 79-23-1.

Workers' compensation, access to records, see § 71-3-66.

(b) ITS will describe why each withheld record or redacted portion of a record is exempt from disclosure.

7. Third Party Information

(a) Documents submitted to ITS by commercial entities in conjunction with the procurement process and with enterprise technology initiatives often contain trade secrets or confidential commercial or financial information subject to the protection of the Public Records Act. Upon request to inspect or copy any third-party document , ITS shall notify the person who filed the document ("Third Party"). Ten (10) Working Days after such notice, the document will be made available for public inspection and/or copying unless the Third Party shall have obtained a court order protecting such records as confidential pursuant to Section 25-61-9, Miss. Code of 1972.

(b) The Third Party must prove to the court's satisfaction that the record or portion of the

record is exempt from disclosure and must deliver the court order preventing the release of all or part of the information to ITS prior to the deadline to prevent disclosure of the information. The Third Party must name the requestor as a party to any action to enjoin disclosure.

(c) ITS will not make a determination as to whether a requested record provided by a Third Party contains trade secrets or confidential commercial or financial information. ITS will provide Third Party Notice as outlined above and allow the court to determine if a protective order should be issued.

(d) Documents are frequently produced by ITS that contain specific information obtained directly from a Third Party and, as such, may be subject to Third Party Notice as described above. Examples include, but are not limited to, detailed proposal evaluation documentation; line-item pricing spreadsheets; and contract exhibits containing proprietary vendor information and marked "confidential." In no event, however, will ITS be obligated to provide Third Party Notice prior to the release of ITS-generated documents containing summary-level information or other information as may be required to be made public record as part of the fulfillment of ITS' statutory mission.

(e) All ITS employees are Confidentiality Officers, as defined in Section 25-53-51 of Mississippi Code, and have been duly sworn in accordance with the oath contained therein. Information and data owned by another agency or institution and residing at ITS must not be disclosed by ITS employees, as mandated in the oath taken as Confidentiality Officers. Requests for such data must be made to the originating agency or institution.

8. Costs of providing public records.

(a) **Costs for fulfilling a request.** Section 25-61-7(1), Miss. Code of 1972, reads in part as follows: "Except as provided in subsection (2) of this section, each public body may establish and collect fees reasonably calculated to reimburse it for, and in no case to exceed, the actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records." ITS is a 100% special fund agency and bills by the hour for services provided to customers. Because time spent fulfilling public records requests is time that would otherwise be spent on customer projects, this time will be invoiced at the hourly billing rate of the staff members performing tasks required to fulfill the request. Billing rates are established in compliance with federal cost allocation guidelines. The current range of billing rates for ITS staff is shown in the ITS Public Records Request Procedures Attachment to this document. ITS commits to providing standard information on the Internet at no cost to the requestor and to fulfilling Custom Requests as expeditiously and efficiently as possible. ITS will provide a cost estimate to the requestor prior to the requestor's incurring any charges above those of the initial research fee discussed below.

(b) **Initial Evaluation and Research Fee.** ITS charges an initial fee, in the amount specified in the ITS Public Records Request Procedures Attachment to this document, for every customized public records request . This fee covers the cost of coordinating with the applicable project team to ascertain documents that are available within the scope of the request; reviewing the requested records; determining based on the content of the records whether Third Party Notification must be provided; providing required notifications; and developing a cost estimate and timetable for fulfilling the request. A Custom Public Records Request cannot be processed until this initial fee is received. The initial fee is non-refundable.

(c) **Charges for staff services.** The actual cost of searching for and reviewing the information, providing Third Party Notice if required, copying or scanning, redacting exempt information from public records, and other services required to fulfill the Custom Request, shall be based upon the applicable hourly rate, as described in 8.a. above, which shall be multiplied by the actual time to complete the tasks. If a request requires legal analysis and advice to determine possible exemptions, ITS will include the actual cost of the attorney's time in the cost of fulfilling the request.

(d) **Costs for paper copies.** A requestor may obtain standard black and white photocopies for the amount specified in the ITS Public Records Request Procedures Attachment to this

document.

Before copies can be made and/or provided to the requestor, the requestor must pre-pay all reasonably estimated costs of copying all the records selected by the requestor. ITS will not charge sales tax when it makes copies of public records.

(e) **Costs for electronic records.** The cost of electronic copies of records and/or scanned copies of nonelectronic records shall be the amount specified as the media cost for a CD in the ITS Public Records Request Procedures Attachment to this document. The cost of the scanning process will be calculated at the hourly service rate. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies, such as research and scanning fees.

(f) **Costs of mailing.** ITS will charge actual costs of mailing, including the cost of the shipping container.

(g) **Payment.** Payment may be in the form of a certified check, money order, or corporate check made payable to ITS for the amount specified. No cash or personal checks can be accepted.

9. Review of denials of public records.

(1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the Public Records Officer for a review of that decision. The petition must include a copy of or reasonably identify the written statement by the Public Records Officer or designee denying the request.

(2) **Consideration of petition for review.** The Public Records Officer must promptly provide the petition and any other relevant information to the ITS Executive Director. That person will immediately consider the petition and either affirm or reverse the denial within two (2) Working Days following ITS' receipt of the petition, or within such other time as ITS and the requestor mutually agree to.

(3) **Review by the Ethics Commission.** Pursuant to Section 25-61-13, if ITS denies a requestor access to public records, the requestor may ask the Ethics Commission to review the matter. The Ethics Commission has adopted rules on such requests. They may be found at www.ethics.state.ms.us.

(4) **Judicial review.** Any person whose request for public records was denied may institute a suit in the Chancery Court of Hinds County, seeking to reverse the denial, as set forth in Section 25-61-13.

Attachment: ITS Public Records Request Procedures

NOTE: Please refer to "ITS Public Records Policy" above for the rules and guidelines under which these procedures were developed and are administered.

STEP 1: Requestor submits a written request for the information and includes payment:

a. Use the ITS Public Records Request Form [attached below] or your own format.

b. Include the information requested on the ITS Public Records Request form: Name of requestor; address of requestor; other contact information, including telephone number and e-mail address; identification of the public records adequate for the Public Records Officer to locate the records; and date of the request;

c. Address the request to: ITS Public Records Officer, Mississippi Department of Information Technology Services, 301 North Lamar Street, Suite 508, Jackson, MS 39201.

d. For documents listed on the attached Schedule of Fees under "Standard Documents," each request must be accompanied by payment in the amount specified on the payment schedule.

e. For any Custom Request (i.e. any request for information not included in the list of Standard Documents), the request must be accompanied by payment in the amount of ~~$60~~$65 to cover the first hour of staff time involved in evaluation and research of the request. This payment is non-refundable and is applied toward the total actual cost of filling the Public Records Request.

f. Payment must be in the form of a certified check, money order, or corporate check made payable to ITS for the amount specified. No cash or personal checks can be accepted.

g. Please note that, because payment must be submitted with the request, no verbal, telephone, email, or fax requests can be accepted for either standard documents or custom requests.

h. Requests not accompanied by payment in the amount specified for Standard Documents or in the amount of ~~$60~~$65 for Custom Requests will be closed within ten (10) Working Days of the date of notification to the requestor, if payment is not received.

i. Frequently requested information, including current Express Products Lists, current and recent RFPs, procurement status and award information, the Procurement Handbook, and vendor information on how to do business with the State, is available free of charge on the ITS website. Requestors are urged to review the website prior to submitting a request. For assistance in locating information on the website, call the Procurement Help Desk, 601-576-HELP (576-4357).

STEP 2: ITS evaluates and researches the request.

a. The ITS Public Records Officer determines whether the request is for a Standard Document or is a Custom Request. For Standard Documents, skip to Step 3.

b. For Custom Requests, the ITS Public Records Officer evaluates the request; coordinates with the ITS project manager for the applicable project to ensure all relevant information is reviewed; researches the project file and other sources to see what information is available and in what format the information is stored; and estimates the effort that will be required to reproduce the information. This research may require the retrieval of files that have been archived or the search of electronic records.

c. The ITS Public Records Officer prepares a schedule and estimated cost for the Public Records Request, based upon the volume of information, the format in which the information is stored, and whether Third Party information has been requested. The Initial Payment covers the first hour of ITS staff time involved in researching the request, retrieving files, preparing the estimate, and providing Third Party Notice. The Initial Payment is non-refundable if the requestor decides not to proceed with the request after receiving the schedule and estimated cost.

STEP 3: ITS provides Standard Document or provides cost estimate for Custom Request

a. Upon receipt of a written request accompanied by the appropriate payment, ITS will

provide the requested **Standard Document** within seven (7) Working Days.

b. For **Custom Requests** accompanied by the appropriate initial payment as described above, ITS will furnish the requestor within seven (7) Working Days a cost estimate and projected schedule for providing the information included in the request.

iii. When payment in the amount of the estimated remaining balance is received from the requestor, ITS will provide the requested information for Customer Requests.

iv. ITS staff will make a good faith effort to provide the requested information within fourteen (14) Working Days. Note, however, that if Third Party Information is requested, additional time will be required to notify the Third Party and to provide this party the opportunity to protect any confidential information. ITS cannot accept payment for the balance of the request until the deadline for obtaining a court order to block release of Third Party Information has passed. (See discussion of Third Party Information in Step 4 below).

STEP 4: ITS provides Third Party Notice as needed.

a. All information and documents produced or received by ITS, including those associated with competitive procurements, may be requested by any business or individual under the ITS Public Records Policy in accordance with these Public Records Procedures. Proposals and information extracted directly from proposals during the evaluation process, as well as certain other documents prepared by vendors and submitted to ITS, will be considered Third Party information and will not be released until notice has been given to the party submitting the information, as described below.

b. When ITS receives a request to release information provided by a Third Party, which may contain trade secrets or confidential commercial or financial information, the owner of this information is notified of the name and address of the party requesting the information and provided a copy of the request.

c. The owner of the information ("Third Party") is given ten (10) Working Days to obtain a court order protecting the information, or portions of the information, as confidential.

d. If the owner of the information seeks a court order, the party seeking the court order must name the requestor as a party to any action to enjoin disclosure.

e. If a court order is delivered to ITS by the deadline protecting all requested information, ITS will notify the requestor that the information is protected and cannot be furnished.

f. If no court order is received by the deadline, or if portions of the requested information are excluded from the court order, ITS will release all information not protected to the requestor once the deadline has passed and payment for the information has been received from the requestor.

STEP 5: Requestor submits payment of remaining balance for Custom Requests.

a. For Custom Requests, ITS will have provided the requestor, as outlined in Steps 2 and 3 above, a cost estimate and schedule for producing and delivering the information requested. Such costs include, but are not limited to, staff time to evaluate and research the request, retrieve any relevant files, organize the information, notify any Third Parties, and produce the information in final form for delivery. The Initial Fee is deducted from the total estimated cost for a net balance due, if any.

b. Requestor remits payment for the remaining balance, if any. Payment must be in the

form of a certified check, money order, or corporate check made payable to ITS for the amount specified. No cash or personal checks can be accepted.

c. Should the actual cost of producing the requested information exceed the estimate provided, ITS notifies the requestor of the additional amount due. The requestor remits the additional amount before ITS provides the information.

STEP 6: ITS provides the information for Custom Requests to the requestor.

a. ITS sends the requested information via U.S. mail, unless the requestor has specified another form of delivery.

b. ITS provides the requested information in pdf format on CD-ROM, unless another format has been specified by the requestor.

c. Once the information has been provided, ITS closes the request.

SUGGESTIONS FOR MINIMIZING COSTS FOR PUBLIC RECORDS REQUESTS:

1. Make the request as specific as possible. The less defined and/or more inclusive the scope of the Public Records Request, the more documents and files have to be searched and evaluated by the ITS staff. For example, wording in requests asking for "all records, papers, documents, messages, correspondence, notes, etc. related to this or similar projects" is extremely open-ended and requires staff to interpret what time-frame, sources of information, and project files are reasonable to research and evaluate. The wider the "net," the greater the effort required, and, thus, the greater the cost to the requestor.

2. Provide information and payment timely. Sometimes the requestor will submit a Public Records Request and then not respond with payment during the required time frame once the schedule and estimate are provided. If the requestor later decides to proceed with the request, ITS staff must again locate the information and develop a new schedule and cost estimate. The requestor must submit a new request with the ~~$60~~$65 initial payment.

3. Request information as soon as possible after ITS creates or receives the information. Project files are archived off-site after a reasonable time period. Requests for information on projects for which a contract has been signed for several months are typically more expensive to respond to than requests for information on projects that have been recently awarded.

Schedule of Fees

Standard Documents:	
Vendor information packet	No Charge
Paper copy of an Express Products List	$25
EPL Marketing Report	$25
Paper copy of ITS master mailing list in mailing label format: Includes IT directors, agency heads, and purchasing agents of state agencies, universities, and	No Charge

community colleges	
Printed Copy of RFPs	$25, plus actual cost of reproducing any oversized diagrams or other special attachments
Copy of RFPs on CD in Microsoft Word 2000 format	$25 for Word document; any oversized diagrams or other special attachments will be reproduced on paper or electronically at actual cost
Paper copy of a project contract (excluding confidential exhibits)	$25
Paper copy of Procurement Handbook	$50
Custom Requests and Variable Costs:	
Evaluation & research payment ("Initial Fee"): Due with the submission of Public Records Requests for Custom Requests and is applied toward the actual cost of filling the Public Records Request	~~$60~~$65
Fees for fulfilling Custom Requests, based on the expense categories below:	Quoted individually upon receipt of written request and ~~$60~~$65 evaluation and research payment (above).
In-house standard black & white photocopies	$0.15 per page (paper/copier fee)
CD (with .doc, .xls, or .pdf files of requested information)	$5.00 per CD (media fee)
Postage, UPS, Federal Express[1]	Actual cost
Staff time	Actual staff time required to provide all services to fulfill the Public Records Request, including but not limited to researching; providing notifications; and compiling, copying, scanning, and delivering requested information, at staff members' hourly rates (~~$60~~$65 - $80 per hour)
Computer processing	Actual Cost
Temporary agency personnel[1,2]	Actual Cost
Reproduction cost by outside print facility[1]	Actual Cost

[1] ITS may request that payments for outside services be made by the requestor directly to the

company providing the services.

[2] ITS reserves the right to use temporary personnel and services, the cost of which will be passed on to the requestor, if sufficient in-house personnel are not available to respond to the request in a timely manner.

PUBLIC RECORDS REQUEST FORM:
/its/procman.nsf/f4ad43bd44ad9d8c86256daa0063e1f0/bb780b5a8360c3138625765d004e4aff/$FILE/public records request form.2.docx/its/procman.nsf/f4ad43bd44ad9d8c86256daa0063e1f0/bb780b5a8360c3138625765d004e4aff/$FILE/public records request form.2.docx