

## **Title 18: Human Services**

### **Part 4: Division of Human Resources**

#### **Part 4 Chapter 1: Public Records Act Policy**

*Rule 1.1 Requests.* All requests for information under the Mississippi Public Records Act (MPRA) or the Freedom of Information Act (FOIA) must be submitted in writing. A request to inspect, copy, or otherwise reproduce documents shall be immediately forwarded to the Division of Human Resources who will handle the disposition of the request.

If the request form is not available in an MDHS location, the telephone number of the Division of Human Resources shall be provided to the requestor so that the form may be furnished to him/her. Written requests for public records presented to any MDHS location shall immediately be forwarded via fax to the Division of Human Resources due to the time-sensitive nature of these requests. The hard copy of the request shall then be mailed to the Division of Human Resources at State Office.

Source: *Miss. Code Ann. §25-61-5 (2011)*

*Rule 1.2: Determination if Records May be Produced.* The Division of Human Resources will determine, with the assistance of the Attorney General's office, whether the requested records may be released or are exempt from production under the MPRA/FOIA. The Division of Human Resources shall either produce the public record within seven (7) working days of its receipt or provide a written explanation to the person requesting the public record stating when the record will be produced, including an expected date of completion, or stating a reason that the record cannot be produced. All public record requests under MPRA/FOIA shall be answered no later than fourteen (14) working days after the initial receipt of the request, unless there is a mutual agreement between the parties.

If a determination is made that the records requested are exempt under the law, a statement of the specific reason(s) for denial shall be furnished to the requesting party within seven (7) days of initial receipt of the request. All requests, whether granted or denied, shall be kept on file for a period of not less than three (3) years from the date such requests are made.

Source: *Miss. Code Ann. §25-61-5 (2011)*

*Rule 1.3: Assessment of Fees.* The Division of Human Resources shall inform the requestor of the estimated amount of the fees to be charged in order to defray the actual costs of searching, reviewing, copying, and mailing the records. Fees shall be collected prior to providing the requested information to the requestor.

The fees charged in relation to MPRA/FOIA requests shall be in accordance with the following schedule:

A. Photocopies, per copy (one side only).....\$ .25

- B. Staff time expended in photocopying,  
per quarter hour increment.....\$3.00  
(cost per employee\*)
- C. Staff time expended in manual records search,  
per quarter hour increment.....\$3.00  
(cost per employee\*)
- D. Automated records search by computer,  
per quarter hour  
increment.....\$240.00  
minimum charge of \$80.00 (5 minutes or less)

\*For example, if two staff persons must work in unison to search/copy/collate the material, the charge for both will be \$6.00 per quarter hour.

The preceding schedule of fees will apply even if the search is unproductive. Fees charged will not exceed the actual cost of the search and reproduction, therefore, any overpayment of estimated charges will be refunded.

Source: *Miss. Code Ann. §25-61-7 (2011)*

*Rule 1.4: Payment of Fees.* Fees shall be paid by one of the following methods:

- A. Cashier's check
- B. Money order
- C. Personal check (only if drawn on a Mississippi bank and on the account of a resident of Mississippi)

Cashier's checks and/or money orders shall be made payable to "Treasurer, State of Mississippi." If the requestor presents payment at the MDHS State Office Building in Jackson, Mississippi, the payment will be accepted by the Division of Human Resources. Otherwise, payments shall be presented by mail to the Division of Human Resources. Receipts for payments received via mail will be provided to the requesting party by mail within five (5) working days of receipt of payment. The payment and a copy of the receipt will be forwarded to the Division of Budgets and Accounting for deposit to the proper fund.

Source: *Miss. Code Ann. §25-61-7 (2011)*

*Rule 1.5: Waiver of Fees.* A waiver of fees may be requested by the person making the request for search, inspection, or reproduction of documents. The Executive Director has the authority to waive charges when deemed appropriate in his/her judgment. However, all requestors must agree to pay the reasonable cost of labor and the fees for reproduction of documents when making their request. The requestor may specify a specific dollar amount that should not be exceeded in the event a waiver of fees is not granted.

Source: *Miss. Code Ann. §25-61-7 (2011)*

*Rule 1.6: Prescribed Form.* Form DHS-ADM-1000, Request to Inspect, Copy or Reproduce Public Records, is the prescribed form for making requests in conjunction with this policy.

Source: *Miss. Code Ann. §25-61-5 (2011)*

## **Part 4 Chapter 2: Whistleblower Policy**

*Rule 2.1 Definitions:* The following definitions shall apply to this policy:

- A. “Abuse” means acting in an arbitrary and capricious manner that adversely affects the accomplishment of a function of any governmental entity.
- B. “Governmental entity” means a board, commission, department, office or other agency of state or political subdivision of the state.
- C. “Employee” means any individual employed or holding office in any department or agency of state or local government.
- D. “Improper governmental action” means any action by an employee which is undertaken in the performance of the employee’s official duties, whether or not the action is within the scope of the employee’s employment:
  - 1) Which is in violation of any federal or state law or regulation, is an abuse of authority, results in substantial abuse, misuse, destruction, waste, or loss of public funds or public resources; or
  - 2) Which is of substantial and specific danger to the public health or safety; or
  - 3) Which is discrimination based on race or gender.
- E. “Misuse” means an illegal or unauthorized use.
- F. “Personnel action” means an action that affects an employee’s promotion, demotion, transfer, work assignment or performance evaluation.
- G. “State investigative body” shall mean the Attorney General of the State of Mississippi, the State Auditor, the Mississippi Ethics Commission, the Joint Legislative Committee on Performance Evaluation and Expenditure Review or any other standing committee of the Legislature, or any district attorney of the State of Mississippi.
- H. “Use of official authority or influence” includes taking, directing others to take, recommending, processing or approving any personnel action such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, performance evaluation or other disciplinary action.
- I. “Waste” means an unnecessary or unreasonable expenditure or use.

- J. “Whistleblower” means an employee who in good faith reports an alleged improper governmental action to a state investigative body, initiating an investigation. For the purposes of the provisions of Sections 25-9-171 through 25-9-177, the term “whistleblower” also means an employee who in good faith provides information to a state investigative body, or an employee who is believed to have reported an alleged improper governmental action to a state investigative body or to have provided information to a state investigative body but who, in fact, has not reported such action or provided such information.

Source: *Miss. Code Ann. §25-9-171 (2012)*

*Rule 2.2 Prohibitions:* The Mississippi Department of Human Services (MDHS) shall not dismiss or otherwise adversely affect the compensation or employment status of any employee because he/she testified or provided information to a state investigative body whether or not the testimony or information is provided under oath.

Reprisal or retaliatory action means, but is not limited to:

- A. Unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations;
- B. Demotion;
- C. Reduction in pay;
- D. Denial of promotion;
- E. Suspension;
- F. Dismissal; and
- G. Denial of employment.

This policy does not, in any way, prohibit MDHS from making any decision exercising its authority to terminate, suspend or discipline an employee who engages in workplace reprisal or retaliatory action against a whistleblower.

**MDHS is not precluded from taking any action in accordance with established personnel policies against an employee who knowingly and intentionally provides false information to a state investigative body.**

Source: *Miss. Code Ann. §25-9-173 (2012)*

*Rule 2.3 Liability of Agency for Violating Provisions:* If an employee of MDHS is found to have violated the provisions of this policy MDHS shall be liable to the affected employee for back pay

and reinstatement. The affected employee may also bring action against MDHS seeking certain fees and damages. Additionally, the court may find MDHS's executive director individually liable for a civil fine of up to \$10,000.00 for each violation.

Conversely, if the court determines that any action filed under this policy by an employee is frivolous and unwarrantable, the court may award to the employer court costs and reasonable expenses, including attorney's fees, incurred in defense of actions brought by the employee under this policy.

Source: *Miss. Code Ann. §25-9-175 (2012)*

*Rule 2.4 Actions to Recover Civil Fines and Other Penalties:* All actions brought against MDHS under the provisions of this policy may be instituted in the Circuit Court. In such action, the employee shall prove by a preponderance of the evidence that, but for his providing information or testimony to a state investigative body prior to occurrence of the dismissal or any adverse action, his dismissal or any adverse action taken against him would not have occurred.

**Employees of Mississippi state agencies who are eligible to do so are required to utilize the grievance process as provided in the Mississippi State Employee Handbook prior to initiating any action under this policy.**

Source: *Miss. Code Ann. §25-9-177 (2012)*