

MISSISSIPPI ETHICS COMMISSION

P. O. BOX 22746
JACKSON, MISSISSIPPI 39225-2746
TELEPHONE (601) 359-1285

Case No. R-

PUBLIC RECORDS COMPLAINT

PLEASE READ THE FOLLOWING STATEMENTS BEFORE COMPLETING THIS FORM:

You may only file this complaint if you have already requested public records from a public body, and you have not received the records within the period of time allowed by law. You must attach the written denial of your records request, if any, to this form, as well as any other correspondence involving your records request. Pursuant to Section 25-61-13, Miss. Code of 1972, the Ethics Commission must forward a copy of this complaint to the head of the public body involved, and the public body may file a response. After completing, signing and dating the form, please mail it postage prepaid to the address listed above.

PERSON MAKING COMPLAINT (Complainant):

Name: Shadrack T. White, Mississippi Justice Institute

Mailing Address: 520 George St, Jackson, MS, 39202

Telephone No.: 601.969.3100 Email Address: white@msjustice.org

PUBLIC BODY AGAINST WHICH COMPLAINT IS MADE (Respondent):

Name of Public Body: City of Jackson

Name of Head of Public Body: Chokwe Antar Lumumba

Title or Position: Mayor

Mailing Address: 219 S President St, Jackson, MS 39201

Telephone No.: 601.960.1084 Email Address: cclark@city.jackson.ms.us

Name of Individual from whom Records Were Requested: Chokwe Antar Lumumba (via website)

Title or Position: Mayor

Mailing Address: 219 S President St, Jackson, MS 39201

Telephone No.: 601.960.1084 Email Address: cclark@city.jackson.ms.us

ALLEGATIONS AND STATEMENT OF FACTS:

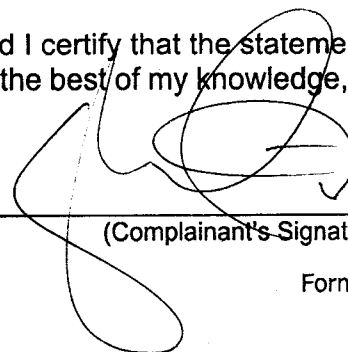
In your own words, please describe as specifically as possible the documents you requested and give any reasons why you believe the records should have been produced to you.

SEE ATTACHED ALLEGATIONS / COMPLAINT.

I have read and understood everything in this complaint, and I certify that the statements, matters and allegations set forth in this complaint are true and correct to the best of my knowledge, information and belief and are made of my own free will.

3.2.18

(Date)

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

(Complainant's Signature)

SUMMARY OF ALLEGATIONS/COMPLAINT

In response to a public records request, the City of Jackson acknowledged it is destroying public records, violating Mississippi's Public Records Act and records retention laws. This complaint asks the Mississippi Ethics Commission to rule that the City violated public records laws, order the City to begin retaining the relevant records, and levy any penalties it deems appropriate.

BACKGROUND AND ARGUMENT

The relevant records, in this case, are Immigration and Customs Enforcement (ICE) detainers.

An ICE detainer, also known as an I-247A, is a form that ICE sends to local law enforcement when local law enforcement arrests an illegal alien. "ICE places detainers on aliens who have been arrested on local criminal charges and for whom ICE possesses probable cause to believe that they are removable from the United States, so that ICE can take custody of the alien when he or she is released from local custody. When law enforcement agencies fail to honor immigration detainers and release serious criminal offenders, it undermines ICE's ability to protect public safety and carry out its mission." ICE Detainer Policy, <https://www.ice.gov/detainer-policy> (last visited Feb. 23, 2018).

DESTROYING ICE DETAINERS MAKES IT IMPOSSIBLE FOR THOSE DETAINERS TO EVER BE MADE PUBLIC, RUNNING AFOUL OF THE PLAIN LANGUAGE AND SPIRIT OF THE PUBLIC RECORDS ACT.

ICE detainers are public records. Miss. Code Ann. 25-61-3 ("Public records' shall mean 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.") (emphasis added). Here, detainers are "papers . . . possessed . . . for use in the conduct . . . of any business . . . of [the] public body." *Id.* Detainers are papers sent to the City as part of their law enforcement function.

When a public body *receives* a record, as opposed to *creating* the record, the record is still public property. Miss. Code Ann. 25-59-19 ("All records created **or received in the performance of public duty and paid for by public funds** are deemed to be public property and shall constitute a record of public acts.") (emphasis added); *see also* Miss. Code Ann. 25-59-3 ("Public records' shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other materials regardless of physical form or characteristics made **or received** pursuant to law or ordinance or in connection with the transaction of official business by any agency or by any appointed or elected official."). The City receives ICE detainers from the federal government. The received documents are public property and public records.

Municipalities are "public bodies" subject to public records laws. Miss. Code Ann. 25-61-3 ("Public body shall mean . . . any municipal corporation . . .").

Municipalities have a duty to keep public records so that they "shall be available for inspection by any person . . . furthermore, providing access to public records is a duty of each public body . . ." Miss. Code Ann. Section 25-61-2. In addition, "all 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 . . ." Miss. Code Ann. Section 25-61-5.

In this case, the City violated its duty to ensure public records are available for inspection by destroying the public records. The Mississippi Justice Institute sent a public records request to the City asking for "[a]ll records concerning any and all detainer or immigration hold requests from January 1, 2014, to the present," among other things. See attached January 31 letter from the Jackson Police Department. The City responded with one sentence: "There are not records kept or maintained by the department regarding detainer or immigration hold request" (sic). *Id.*

DESTROYING ICE DETAINERS IS A VIOLATION OF THE PUBLIC RECORDS RETENTION SCHEDULE.

Jackson's failure to keep or maintain ICE detainers is also a violation of public records retention laws. The Mississippi Department of Archives and History controls the amount of time public records must be preserved in order to comply with Mississippi law. Miss. Code Ann. 25-59-21 ("**No person may destroy, sell, loan or otherwise dispose of any public record without the consent of the director.** The department [of Archives and History] shall adopt reasonable rules and regulations, not inconsistent with this chapter, which shall be binding on all state agencies and appointed and elected state officials, relating to the destruction and disposal of records.") (emphasis added). This provision applies to local governments, too. *Hilliard* 1991 WL 577473 (Miss. A.G.) ("This office is of the opinion that § 25-59-21 (Supp.1990) prohibits the destruction of public records by both state and local government bodies, including cities and counties, without the consent of the director of the Department of Archives and History.").

The Department of Archives and History has authorized the Local Government Records Office to write a retention schedule spelling out how long records must be kept by municipalities. Miss. Code Ann. 25-60-1 (creating the Local Government Records Committee and stating that "it is the duty of municipalities . . . to cooperate with the committee in complying with the provisions of this section."). The retention schedule written by the Department for municipalities is binding on municipalities. *See, e.g., Whitehead* 2011 WL 4383414 (Miss. A.G.) ("With respect to the amount of time the municipality is required to retain the inventory record, the retention schedule issued by the State of Mississippi Local Government Records Division of the Department of Archives and History **requires** a municipality to retain the inventory record . . .") (emphasis added).

The retention schedule for municipalities is attached. It requires that law enforcement records like activity reports, arrest reports, offense reports, and other documents be retained instead of destroyed. ICE detainers could fall under offense reports, which contain "all information gathered by the investigating law enforcement officer[s]." But regardless of which specific retention rule applies to ICE detainers, the detainers are public records required to be retained by public records laws and the retention schedule.

MEC'S INVESTIGATION

The Mississippi Ethics Commission has authority to enforce the provisions of the public records law. Miss. Code Ann. 25-61-13. Those who violate records retention laws are also subject to penalties. *See* Miss. Code Ann. 25-59-23 ("The theft, or deliberate alienation, alteration or **destruction of records** by any person or persons in a manner **not authorized by an applicable records control schedule**, or the

unlawful divulging of restricted information under this chapter shall constitute a misdemeanor, punishable by a fine of not less than five hundred dollars (\$500.00) and not greater than one thousand dollars (\$1,000.00).” (emphasis added). The Ethics Commission also has the authority to “require production . . . of all books, papers, vouchers, documents, and writings” applicable to a dispute. R. of the Miss. Ethics Commission 201(5.2). Finally, the Commission has the power to “examine witnesses in cases pending before the Commission.” Id.

Complainant asks that the Commission and its hearing officer, as part of its investigation of this case,

- Require production of any records that respond to the January 31, 2018, public records request attached to this complaint
- Call witnesses from the Jackson Police Department to testify as to what the Department does with ICE detainers when detainers are received
- Require production of any documents that speak to what the Jackson Police Department does with ICE detainers, and
- Grant oral argument for this case.

REMEDY REQUESTED

As for remedies, Complainant requests that the Ethics Commission 1) rule that the City has violated the aforementioned state laws, 2) order the City to immediately instruct the Jackson Police Department to begin retaining ICE detainers in accordance with the municipality retention schedule, 3) order the Jackson Police Department to record/retain communications about the Police Department’s decision of whether to honor the detainer, and 4) levy any fines or penalties it deems appropriate.

CONCLUSION

In general, “there is to be a liberal construction of the general disclosure provisions of a public records act.” *Mississippi Dep’t of Wildlife, Fisheries & Parks v. Mississippi Wildlife Enf’t Officers’ Ass’n, Inc.*, 740 So. 2d 925, 936 (Miss. 1999). Disclosure is impossible if records are illegally destroyed. Public oversight of law enforcement is just as, if not more, important as oversight of any other public body. The presumption in favor of open government should be honored here. For these reasons, the Mississippi Ethics Commission should rule in favor of Complainant and grant its requested remedies.

3.2.18

Date

Signature of Complainant