

Administrative Procedures Act Rules

Title 11: Mississippi Department of Environmental Quality

Part 1: Administrative Regulations

Part 1, Chapter 2: Mississippi Commission on Environmental Quality Regulations Regarding the Review and Reproduction of Public Records.

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Rule 2.1 Authority and Purpose.

In 1983, the Mississippi Legislature passed the Mississippi Public Records Act (“the Act”), Miss. Code Ann. §§ 25-61-1 through 25-61-19 (Rev. 2010). The purpose of the Act is to provide the public full access to public records concerning the government’s conduct.

This document sets forth the rules and procedures that the Mississippi Department of Environmental Quality (“MDEQ”), the Mississippi Commission on Environmental Quality (“Commission”), and the Mississippi Environmental Quality Permit Board (“Permit Board”) follow in order to provide full access to public records.

These rules provide information to people wishing to request access to public records of MDEQ and establish processes for both requestors and MDEQ Staff that are designed to best assist members of the public in obtaining such access. The Act and these rules will be interpreted in

favor of disclosure. In carrying out its responsibilities of the Act, MDEQ will be guided by the provisions of the Act describing its purposes and interpretation.

Source: Miss. Code Ann. § 25-61-1, *et seq.*

Rule 2.2 Definitions.

- A. “Public body” means any department, bureau, division, council, commission, committee, subcommittee, board, agency and any other entity of the state or a political subdivision thereof, and any municipal corporation and any other entity created by the Constitution or by law, executive order, ordinance or resolution. The term “public body” includes the governing board of a charter school authorized by the Mississippi Charter School Authorizer Board. Within the meaning of this chapter, the term “entity” shall not be construed to include individuals employed by a public body or any appointed or elected public official.
- B. “Public records” means 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.

Source: Miss. Code Ann. § 25-61-3 (Rev. 2010).

Rule 2.3 Requesting Public Records.

- A. Freedom of Information Officer. The Freedom of Information Officer (“FOI Officer”), located in MDEQ, is responsible for overseeing compliance with the Act. Persons requesting public records maintained by MDEQ must submit a public records request to the FOI Officer within the agency. Although the FOI Officer oversees compliance with the Act, other staff members may process the request. The public records request must be made and addressed specifically to MDEQ and not any other agency or other governmental entity.
- B. Format of Request. Any person requesting public records maintained by MDEQ must make a formal written request to the FOI Officer. The formal written request must include the following information:
 - 1. Name of requestor;
 - 2. Address of requestor;

3. Specifics¹ on the type of information requested;
4. Name of facility (if applicable);
5. City and county where facility is located (if applicable);
6. Other contact information, including telephone number and any e-mail address; and
7. The date and time of day of the request.

A variety of records are available on the MDEQ website at http://www.deq.state.ms.us/mdeq.nsf/page/Main_Home?OpenDocument and more specifically <http://opc.deq.state.ms.us/default.aspx>. Requestors are encouraged to view the documents available on the web-site prior to submitting a records request.

- C. Record Request Submission. Public record requests must be submitted either by mail, e-mail, or fax to one of the following locations:

Mail: Freedom of Information Officer
Mississippi Department of Environmental Quality
P.O. Box 2261
Jackson, MS 39225

E-mail: FOI_Mail@deq.state.ms.us

Fax: (601) 354-6356

Additional contact and other information can be found on MDEQ's web-site located at http://www.deq.state.ms.us/mdeq.nsf/page/legal_foiaInquiries?OpenDocument.

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*

Rule 2.4 Processing Public Record Requests – General.

- A. Providing access. MDEQ 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. Miss. Code Ann. §§ 25-61-1 and 25-61-5 (Rev. 2010). The FOI Officer or his or her designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

¹ As a general rule, the more specific a requestor is about a public records request, the more likely MDEQ will be able to locate those records in response to the request. If a request does not reasonably describe the records being requested, the agency's response to the request may be delayed.

- B. Inspection Location and Appointment. Public records requests are managed by MDEQ's FOI Officer. When an individual submits a written request, the FOI Officer, or his or her designee, determines the exact location of the records requested. All records normally will be reviewed at the MDEQ office location where the records are housed. If an individual seeks to review records that are housed at multiple MDEQ locations, the FOI Officer will work with other MDEQ staff and the individual requesting the record review to set up an appointment at the appropriate MDEQ location.
- C. Records. A requestor shall not take MDEQ records from MDEQ offices. 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. Pursuant to Rule 2.8 of this regulation, standard photocopies will be provided at the approximate cost of searching, reviewing and/or duplicating the public records. The copying fee schedule will be posted at the FOI review room. The copying fee schedule may be amended and adjusted to cover the costs of complying with FOI requests.
- D. Acknowledging receipt of request. Within seven (7) working days of receipt of the request, the FOI Officer will do one or more of the following:
1. Provide a reasonable estimate of when records will be available;
 2. Request clarification where a request is unclear or does not sufficiently identify the requested records. Such clarification may be requested and provided by telephone. As a result of a clarification, the FOI Officer or his or her designee may revise the time estimate of when the requested records will be available;
 3. Make the records available for inspection or copying in whole or in installments² (where applicable); or
 4. Deny the request.
- E. Time Limit for Response. MDEQ will strive to provide records not exempt from disclosure for review or reproduction as soon as practicable, but no later than seven (7) working days from the date of receipt of the request, as allowed by the Act. The seven (7) working day response period will not include the day the request was initially received. For time calculation purposes the seven (7) working days will begin on the next working day. If MDEQ is unable to produce the documents within the seven (7) working days from the date of the receipt of the request, MDEQ will provide a written explanation (which may be provided by e-mail) to the person making the request which indicates the records are being gathered and specifies with particularity why the records cannot be produced within the seven-day period.

² Production of documents in installments is limited to situations where the requestor has made a large public records request which cannot reasonably be processed or produced within the required response time. See R. 2.4.E. for further information.

1. If MDEQ is unable to produce a public record by the seventh working day after the date of the receipt of the request, MDEQ will provide the record no later than fourteen (14) working days from MDEQ's receipt of the original request after sending written notification to the requestor or at a later date upon mutual agreement of the parties. Requests for records in storage will be provided within seven (7) working days of availability of such records to MDEQ. If MDEQ determines the request would cause a disruption of business, the time period for production of records may be adjusted.
 2. Providing records in installments. When the request is for a large number of records, the FOI Officer or his or her designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty (30) days, the requestor fails to inspect the entire set of records or one or more of the installments, the FOI Officer or his or her designee may stop searching for the remaining records and close the request.
 3. Supplemental, Amended, or Additional Requests. MDEQ treats supplemental, amended, or new requests by the requestor as new requests for purposes of determining all applicable time limitations.
- F. Protecting the rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the FOI Officer may, prior to providing the records, provide notice to such others whose rights may be affected by the disclosure. The notice to the affected persons will include a copy of the request. Such notice should 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. If necessary, the other person may seek a hearing on its confidentiality claim before the commission to prevent or limit the disclosure of the information pursuant to Rule 2.7.
- G. Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If MDEQ believes that a record is exempt from disclosure and should be withheld, the appropriate personnel 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 appropriate personnel will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.
- H. Inspection of records.
1. Hours for Records Inspection. Public records are available for inspection and copying during MDEQ's normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays and any days when MDEQ is not open as a result of inclement weather, loss of power, electricity or water or other circumstances. The time, place and manner of inspection and copying of records

will not be allowed to interfere with other essential duties of MDEQ. Where the requestor is unable to inspect and/or copy the files within the agency's hours of operations, as specified above, the FOI Officer will set up another reasonable time and date for inspection of the files with the requestor.

2. **Inspection Location.** Consistent with other demands, MDEQ shall promptly provide space to inspect public records. 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 to copy.
3. **Time Limitation.** The requestor must claim or review the assembled records within thirty days of the MDEQ notification to him or her that the records are available for inspection or copying. MDEQ will notify the requestor in writing (which may be by e-mail) of this requirement and inform the requestor that he or she should contact MDEQ 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 thirty-day period or make other arrangements, MDEQ 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.
4. **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the FOI Officer or his or her designee will indicate that the MDEQ has completed a diligent search for the requested records and made any located nonexempt records available for inspection.
 - I. **Closing withdrawn or abandoned requests.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay for the requested copies, the FOI Officer will close the request and indicate to the requestor that MDEQ has closed the request.
 - J. **Later discovered documents.** If, after MDEQ has informed the requestor that it has provided all available records, MDEQ 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.

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*, 25-61-2, 25-61-5.

Rule 2.5 Processing Public Record 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 FOI Officer will provide the nonexempt records or portions of such records that are

reasonably accessible in an electronic format that is used by the public body and is generally commercially available, or in a format that is reasonably translatable from the format in which the public body keeps the record. Costs for providing electronic records are governed by Rule 2.8.

- C. Customized access to data bases. With the consent of the requestor, MDEQ may provide customized access if the record is not reasonably locatable or not reasonably translatable into the format requested. MDEQ may charge the actual cost for such customized access.

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*, 25-61-10.

Rule 2.6 Exemptions. The Public Records Act, as well as other statutes and court decisions, provide 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 exemptions³, outside the Public Records Act, that restrict the availability of some documents held by MDEQ for inspection and copying:

- A. Attorney work product, examination, exemption, see § 25-1-102.
- B. Environmental self-evaluation reports, public records act, exemption, see § 49-2-71.
- C. Insurance and insurance companies, risk based capital level requirements, reports exemption, see § 83-5-415.
- D. Personnel files exemption, see § 25-1-100.
- E. Public records and trade secrets, proprietary commercial and financial information, exemption, see §§ 75-26-1, *et seq.* and 79-23-1.
- F. Workers' compensation exemption, see § 71-3-66.
- G. Exemption for records subject to privilege, such as Attorney/Client, Physician/Patient, etc.

Some records are exempt from disclosure, in whole or in part as provided in Rule 2.4.G.

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*, 25-61-5, 25-61-11.

Rule 2.7 Third Party Information and Trade Secrets.

- A. Confidential or exemption claims. When any person files or submits documents with MDEQ which the filer contends are exempt from disclosure under the Public Records Act, the filer shall provide a written statement at the time of filing which shall describe

³ This list is in no way considered to be a complete list of the Public Records Act exemptions that may apply to public records requests.

the documents filed and which shall fully explain why the documents are designated as exempt from disclosure and must specifically cite any statute or other legal authority in support of such designation. Such written statement shall itself be a public record subject to disclosure.

- B. Clear Designation. Any document filed with MDEQ which contains trade secrets or confidential commercial or financial information subject to the protection of any applicable law or court decision shall be clearly designated as such by the filer on its face and accompanying cover letter at the time of filing and shall be placed in an envelope other than white. Each page of each document shall be marked confidential⁴.

- C. Confidential Information Claim Request. Pursuant to Miss. Code Ann. §§ 17-17-27 and 49-17-39, citizens and regulated entities providing information to MDEQ can request that the information be held confidential and not be made available for public inspection; trade secret information or confidential business information that does not concern environmental protection may be treated as confidential. This protection can be claimed properly, however, only for information that does not concern environmental protection. In order to satisfy these statutes, a request for confidentiality must be made in the following manner:
 - 1. The request must be made, in writing, at the same time the information is submitted to MDEQ;
 - 2. The request must describe the information that the requestor would have treated as confidential and must explain the reason(s) why the information qualifies for confidential treatment; and
 - 3. The request must allow disclosure of the confidential information "to authorized department employees and/or the United States Environmental Protection Agency (EPA)."

- D. Prior to Filing. Any person filing documents with MDEQ shall, prior to filing, redact from the documents any social security numbers, account numbers or dates of birth not required to be listed. MDEQ shall determine on a case-by-case basis whether similar information may be redacted by the filer to prevent identity theft. In no event will MDEQ bear any responsibility for a filer's failure to redact such information which leads to or may lead to identity theft or other crime or loss.

- E. Commission approval or denial of Confidential Claim. In order for the claim of confidentiality to become effective against public review, the claim must be "determined by the Commission to be valid." This determination would be made (or denied) after an evidentiary hearing before the Commission held pursuant to Miss. Code Ann. § 49-17-35.

⁴ Merely stamping a document "confidential" is not sufficient to allow the Commission to treat the document as confidential.

1. Initial Acceptance of Confidential Claim. The Commission has adopted the following policy in order to minimize the number of Commission hearings on confidentiality claims that need be pursued. When a citizen or regulated entity submits information under a claim of confidentiality, the claim will be honored initially by MDEQ if the claim regards information that arguably could be considered as not "concerning environmental protection" and if the claim meets the three requirements set forth above in Rule 2.7.C.

If a claim of confidentiality is judged to meet these three requirements, and the document is judged arguably to include information not concerning environmental protection, then that information will be treated as confidential *until and unless a member of the public requests to review the information*. At the time the information is placed in an MDEQ confidential file, a notice will be placed in the entity's public record file indicating that additional information to which a claim of confidentiality attaches is included in a confidential MDEQ file.

- a. Notification of public record request. If and when a member of the public requests access to the information held by MDEQ under a claim of confidentiality, the supplier of the information will be notified of the request and will be given the option either to request a hearing before the Commission concerning the claim of confidentiality; work out a mutually agreeable arrangement with the requestor related to the information to be reviewed; or to allow all of the requested information to be reviewed.
 - b. Commission Hearing. If a hearing is requested, the information will be treated as confidential by MDEQ until the Commission makes a determination on the issue and during the time in which an appeal of that Commission determination could be taken (if the Commission determination is adverse to the person or entity claiming confidentiality).
2. Initial Denial of Confidential Claim. If an initial claim of confidentiality is judged by MDEQ as not meeting the requirements set forth above, and/or as containing information concerning environmental protection, then the person supplying the information will be notified promptly of MDEQ's conclusion and will be notified of his or her right to pursue the claim of confidentiality before the Commission at the next available Commission meeting.

The claimant will be given ten days from notification of deficiency by MDEQ in which either to correct any deficiency in the confidentiality claim (such as the lack of required permission for EPA review) or to request in writing a hearing before the Commission on the confidentiality claim. After that ten-day period, the information will be treated as public information by MDEQ if no adequate correction of the claim or written request for a hearing has been made. Again, if a

timely written request for a hearing is received, MDEQ will treat the information in question as confidential until the Commission makes a final determination and the period for perfecting an appeal regarding that decision has run.

- a. Opportunity to Appeal. If the Commission denies the claim of confidentiality, the claimant may perfect an appeal of that decision to a court of appropriate jurisdiction (by filing a notice of appeal with MDEQ, as required by Miss. Code Ann. § 49-17-41).
- b. Treatment of Information if appealed. MDEQ automatically will continue to treat the information at issue as confidential for thirty (30) days after the filing by MDEQ of the record on appeal with the appropriate court. Within those thirty (30) days, the claimant must apply to the court in which the appeal is lodged for any further protection of the information pending appeal (through an appeal with supersedeas, temporary restraining order, preliminary injunction, or similar relief). MDEQ will treat the information as public information after that thirty-day period unless a court of appropriate jurisdiction instructs MDEQ to hold the information as confidential or unless all parties to the matter agree otherwise.

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*, 25-61-9, 49-17-1, *et seq.*, 49-17-35, 49-17-39, 49-17-41, 49-17-17(i), 49-2-1, *et seq.*, and 17-17-1, *et seq.*, 17-17-27.

Rule 2.8 Document Reproduction, Certification and Other Costs. The schedule of charges and/or fees will be posted in the File Review Room and with the FOI Officer.

- A. MDEQ Staff and Contractor's Time. A requestor is responsible for paying the actual costs for the time staff and/or the time contractors allot to the requestor's public records request (this includes searching, reviewing and/ or duplicating the records). Costs will be calculated at the rate of the lowest level employee or contractor competent to respond to the request. This includes any costs associated with any public records request which involves a matter that MDEQ has contracted with outside attorneys on, which will require such attorneys' review prior to document production. MDEQ will collect these fees before providing the requested documents for review.
- B. Charges for searching, reviewing and redacting. The actual cost of searching for and reviewing and, if necessary, redacting exempt information from public records shall be based upon the hourly rate of compensation for the lowest paid agency employee qualified to perform the task, which shall be multiplied by the actual time to complete the task. This includes the actual costs required for searching, reviewing and redacting requested documents by contractors which have been contracted by MDEQ to work on the matters being requested.

- C. Copies. MDEQ allows individuals submitting a written request for records to copy documents that are not exempt from disclosure or to have the documents copied for them. In general, MDEQ is not staffed sufficiently to respond to requests for MDEQ personnel to copy documents for members of the public. Although MDEQ staff will attempt to facilitate document availability and review, MDEQ usually will (and reserves the right to) deny requests to assign MDEQ staff the task of copying records for members of the public. Copies can be made by the requestor or by an approved copier service.
- D. Costs for copies. Consistent with the copying fee schedule, MDEQ charges a specified amount for a standard black and white photocopy of a record, color copies and scanned copies selected by a requestor. A statement of the factors and the manner used to determine these charges are available from the FOI Officer.
- E. Costs for electronic records. There is generally no charge for e-mailing electronic records to a requestor or for supplying electronic copies via the requestor's storage device; however staff time and other actual costs may apply as fees or costs allowed under Miss. Code Ann. § 25-61-7(2) (Rev. 2010). Requestors may use their own new, in shrink wrap, storage device (clean and free of viruses or corruption) for electronic copies. Requestors must be aware that MDEQ is not responsible if the storage devices are lost, stolen, or damaged. Electronic media devices may be available to the requestor as agency supply permits; MDEQ is not required to supply requestors with electronic media devices. The cost of MDEQ providing an electronic media device will be the actual cost of the storage device. Any other type of electronic storage format charge, as technology advances permit, will be based on the actual cost of the storage device.
- F. Costs of mailing. MDEQ may also charge actual costs of mailing, including the cost of the shipping container.
- G. MDEQ shall require payment in advance for all costs before providing copies or access to records unless the requestor makes satisfactory prior billing arrangements for copying to ensure payment consistent with Rule 2.8.I.
- H. Certification of Hard-Copy and Electronic Documents. MDEQ public record files are working documents, and documents are added to the files regularly. No certification will be made that the records reviewed are the "complete" file, only that the document(s) reproduced are certified as a true copy of the records limited to the date the documents were produced. Certifications will be signed and dated either by the MDEQ Executive Director, his or her designee, or the FOI Officer or his or her supervisor.
- I. Payment and Copying Privileges. Payment may be made by check or money order to MDEQ. The costs of reproduction are payable by the requesting individual, firm, or their representative. In the event the individual, firm or representative making the copies has made prior arrangements for billing with MDEQ, MDEQ will mail a bill for payment for copies once the invoice is signed. Payment is due upon the receipt of the bill. Any individual, firm or their representative that has not made satisfactory arrangements to

ensure payment through billing by invoice or purchase order must pay in advance or at the time of reproduction of the records. Failure to pay a bill will result in the individual, firm or their representative having to pay before the release of subsequent reproductions. Failure to timely pay for copies will result in the loss of future copying privileges until the outstanding bill is fully paid. Payment for the actual cost regarding MDEQ staff and/or contractor's time to search, redact (if applicable) and review the public records related to the request must be made to MDEQ prior to production of the requested documents.

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*, 21-61-5, 21-61-7.

Rule 2.9 Review of Denials.

- A. Review by the Ethics Commission. Pursuant to Miss. Code Ann. § 25-61-13, if MDEQ 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.
- B. 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 Miss. Code Ann. § 25-61-13.

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*, 21-61-13.