

Secretary of State
Heber Ladner Building, 401 Mississippi Street
P. O. Box 136, Jackson, MS 39205

ADMINISTRATIVE PROCEDURES FILING NOTICE

Agency Mississippi Insurance Department Person to Contact Ashley Merryman
Address 501 N. West Street Address P. O. Box 79
Jackson, MS 39201 Jackson, MS 39205
Phone 601-359-3577 Transmittal Date October 8, 2002

Copy Attached: Yes No

Name or Number of Rule(s) Regulation 83-1, As Amended

Terms or Substance of the Actions or Description of the Subject and Issues:

This regulation contains the rules and procedures to be followed by the Mississippi Insurance Department in implementing the Public Records Act of 1983, Miss. Code Ann. 25-61-1 et seq.

Printed Name and Title of Person Authorized to File Rules: Ashley Merryman Special Assistant Attorney General

Name Ashley Merryman Title
Signature

EMERGENCY RULES	PROPOSED ACTION ON RULES	FINAL ACTION ON RULES
<input type="checkbox"/> Original Filing	Action Proposed:	Action Taken:
<input type="checkbox"/> Renewal of Effectiveness	<input type="checkbox"/> New Rule(s)	<input checked="" type="checkbox"/> Adopted with No Changes in Text
To Be In Effect _____ Days	<input checked="" type="checkbox"/> Amendment to Existing Rule(s)	<input type="checkbox"/> Adopted with Changes
Effective Date:	<input type="checkbox"/> Repeal of Existing Rule(s)	<input type="checkbox"/> Adopted by Reference
<input type="checkbox"/> Immediately on	<input type="checkbox"/> Adoption by Reference	<input type="checkbox"/> Withdrawn
<input type="checkbox"/> Other (Specify):	Proposed Date of Adoption:	Date Action Taken _____
	<input checked="" type="checkbox"/> 30 Days after Filing	Effective Date
	<input type="checkbox"/> Other (Specify):	<input checked="" type="checkbox"/> 30 Days After Filing
		<input type="checkbox"/> Other (Specify):

DO NOT WRITE BELOW THIS LINE		
OFFICIAL FILING STAMP	OFFICIAL FILING STAMP	OFFICIAL FILING STAMP
	FILED OCT 08 2002 MISSISSIPPI SECRETARY OF STATE	FILED NOV 13 2002 MISSISSIPPI SECRETARY OF STATE

Accepted for filing by _____ Accepted for filing by [Signature] Accepted for filing by [Signature]



GEORGE DALE
Commissioner of Insurance
State Fire Marshal

LEE HARRELL
Deputy Commissioner

STATE OF MISSISSIPPI
Mississippi Insurance Department

1001 Woolfolk Building (39201)
Post Office Box 79
Jackson, Mississippi 39205-0079
(601) 359-3569
<http://www.doi.state.ms.us>

November 13, 2002

The Honorable Eric Clark
Secretary of State
Heber Ladner Building
401 Mississippi Street
Jackson, MS 39205

RE: Mississippi Department of Insurance Amended Regulation 83-1

Dear Secretary Clark:

Pursuant to Miss. Code Ann. § 25-43-1 et seq., please find enclosed for filing the following documents:

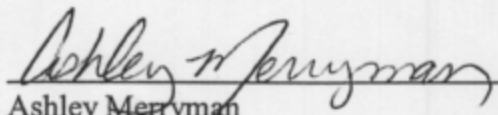
- (1) Administrative Procedures Filing Notice;
- (2) Order adopting the Amended Regulation 83-1, entitled "Mississippi Public Records Act As Same Is Interpreted By The Mississippi Insurance Department"; and
- (3) Department of Insurance Amended Regulation No. 83-1.

Your assistance in this matter will be greatly appreciated.

Sincerely,

GEORGE DALE
COMMISSIONER OF INSURANCE

BY:


Ashley Merryman
Special Assistant Attorney General

Enclosures

STATE OF MISSISSIPPI
OFFICE OF THE COMMISSIONER OF INSURANCE

IN THE MATTER OF:

MISSISSIPPI PUBLIC RECORDS ACT
AS SAME IS INTERPRETED BY THE
MISSISSIPPI INSURANCE DEPARTMENT

CAUSE NO. 02-4532

ORDER

THIS CAUSE came on for hearing to consider the adoption of Mississippi Insurance Department Amended Regulation No. 83-1, entitled, "Mississippi Public Records Act As Same Is Interpreted By The Mississippi Insurance Department", and the Commissioner of Insurance having held a public hearing and heard the comments of all interested parties and the evidence produced by such parties involved and having received no written comments, finds as follows, to-wit:

I.

That on or about October 8, 2002, the Commissioner of Insurance for the State of Mississippi, or his duly appointed representative, pursuant to the provisions of Miss. Code Ann. § 25-43-7(1), filed with the Secretary of State of the State of Mississippi that said Commissioner of Insurance, or his duly designated representative, would hold a public hearing on Tuesday, November 12, 2002, at 1:30 p.m., in the Offices of the Commissioner of Insurance, 10th Floor, Woolfolk State Office Building, 501 North West Street, Jackson, Hinds County, Mississippi to afford all interested persons the opportunity to submit testimony and evidence and to give opinions, make comments, suggestions or objections concerning amended Regulation 83-1.

II.

That the Commissioner of Insurance, or his duly appointed representative, pursuant to the

provisions of Miss. Code Ann. § 25-43-7(1), mailed postage prepaid, copies of an Administrative Procedures Filing Notice and Notice of Hearing to all persons who had made a timely request to the Mississippi Insurance Department for advance notice of said Department's rule making proceedings.

III.

That pursuant to said Notice of Hearing, a public hearing was held before the Commissioner of Insurance of the State of Mississippi, or his duly appointed representative, on November 12, 2002, at 1:30 p.m., in the Offices of the Commissioner of Insurance, 10th Floor, Woolfolk State Office Building, 501 North West Street, Jackson, Hinds County, Mississippi, in which all interested parties were given an opportunity to present their views, opinions, suggestions, comments or objections relative to the amended Regulation 83-1.

IV.

That the Commissioner of Insurance received no written statements from companies, organizations and individuals and no companies, organizations or individuals appeared to give oral statements at the aforesaid public hearing. The Commissioner of Insurance has considered same and, after considering such evidence, is of the opinion that it would be in the public interest to amend the Mississippi Insurance Department Regulation 83-1 entitled, "Mississippi Public Records Act As Same Is Interpreted By The Mississippi Insurance Department."

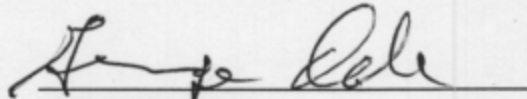
V.

That the Commissioner of Insurance, after having considered all relevant evidence, is of the opinion that it will be in the public interest to adopt the amended Mississippi Insurance Department Regulation No. 83-1 entitled, "Mississippi Public Records Act As Same Is Interpreted By The Mississippi Insurance Department", a copy of which is attached hereto marked Exhibit "A", and made a part hereof as if fully copied herein in words, lines and figures, should be and is hereby

ADOPTED with an effective date of thirty days after the date of filing with the Secretary of State of the State of Mississippi.

IT IS, THEREFORE, ORDERED, that any interested person or party who feels that he or she will be adversely affected by this Order shall have ten (10) days from the date of this Order in which such adversely affected party may file with the Commissioner of Insurance a written statement outlining how such person will be adversely affected and their reasons for review of the Order.

SO ORDERED this the 13th day of November, 2002.

A handwritten signature in black ink, appearing to read "George Dale", is written over a horizontal line.

GEORGE DALE
COMMISSIONER OF INSURANCE
MISSISSIPPI DEPARTMENT OF INSURANCE

State of Mississippi



Jackson

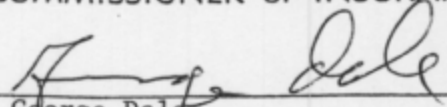
I, GEORGE DALE, **COMMISSIONER of INSURANCE**, OF THE STATE OF
MISSISSIPPI, DO HEREBY CERTIFY THAT

Attached is a true and correct copy of Regulation 83-1 as amended entitled, "Mississippi Public Records Act As Same Is Interpreted By The Mississippi Insurance Department".

Given under my hand and seal of office, this the 13th day of
November ~~2000~~ 2002.

COMMISSIONER of INSURANCE

By


George Dale
Commissioner of Insurance

**REGULATION 83-1, AS AMENDED
MISSISSIPPI PUBLIC RECORDS ACT
AS SAME IS INTERPRETED BY
THE MISSISSIPPI INSURANCE DEPARTMENT**

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Section 83-1.1 **Purpose and application.**

This regulation contains the rules and procedures to be followed by the Mississippi Insurance Department in implementing the Public Records Act of 1983, Miss. Code Ann. 25-61-1 et seq.

Employees of the Mississippi Insurance Department may, however, continue to furnish to the public, informally and without compliance with these procedures, information and records which they customarily furnish in the regular performance of their duties prior to the enactment of the Public Records Act of 1983, Miss. Code Ann. 25-61-1 et seq.

Section 83-1.2 **Statement of policy.**

The policy of the Mississippi Insurance Department is one of full and responsible disclosure of its identifiable records consistent with the provisions of the Public Records Act of 1983, Miss. Code Ann. 25-61-1 et seq. All records not exempt from disclosure will be make available. Moreover, records exempt from mandatory disclosure will be made available as a matter of discretion when disclosure is not prohibited by law or is not prohibited by law or is not against the public interest.

Section 83-1.3 **Personnel.**

(a) A Freedom of Information Officer will be responsible for the processing of all official requests for information/records pertaining to the Mississippi Insurance Department and its separate

divisions including the offices of the Fire Marshal and the Liquefied Compressed Gas Sector.

(b) A Freedom of Information Liaison Officer, located in the office of the Mississippi Insurance Department or its divisions, will be designated from each division of said Department. The duty of this position will be to assist the Freedom of Information Officer in the enforcement of the Mississippi Public Records Act of 1983.

Section 83-1.4 Request for records.

(a) A request for a record of the Mississippi Insurance Department may be made orally or in writing and shall be directed to said agency either by mail at the usual mailing address, P.O. Box 79, Jackson, MS 39205 or in person at the offices of the Mississippi Insurance Department 10th Floor, Woolfolk State Office Building, Jackson, MS 39201. Although oral requests may be honored, a requestor may be asked to submit in writing a request for records not customarily made available. Any written request for records covered by these regulations shall be deemed to be a request for records pursuant to the act whether or not the act is mentioned in the request. When a request is made in writing, both the envelope and the letter should clearly indicate that the subject is a Freedom of Information Request.

(b) A request should reasonably describe the desired record. Where possible, specific information regarding the dates, files, titles, file designation, etc. should be supplied.

(c) Where the information supplied by the requestor is not sufficient to permit the identification and location of the record by the Mississippi Insurance Department without an unreasonable amount of effort, the requestor will be contacted and asked to supply the necessary information. Every reasonable effort shall be made by the agency to assist in the identification and location of requested records.

Section 83-1.5 Time limitations.

(a) Within fourteen (14) working days (excluding Saturdays, Sundays and legal public holidays) of the receipt of a request, the Mississippi Insurance Department shall determine whether to comply with or to deny the request and shall dispatch such determination to the requestor.

(b) If no determination has been dispatched at the end of the fourteen (14) working day period, the requestor may deem his request denied, and exercise a right of appeal in accordance with Section 83-1.9 of this regulation. When no determination can be dispatched within the applicable time limit, the Mississippi Insurance Department shall nevertheless continue to process the request; on expiration of the time limit the agency shall inform the requestor of the reason for the delay, of the date on which a determination may be expected, and of his right to treat the delay as a denial and of the appeal rights provided by the Act. The agency may ask the requestor to forego appeal until a determination is made.

Section 83-1.6 Exemptions.

(a) A requested record shall not be withheld from inspection or copying unless it comes

within one of the classes of records exempted by the Public Records Act of 1983, Miss. Code Ann. 25-61-1 et seq.

(b) The classes of records authorized to be exempted from disclosure are those which concern matters that are:

(1) records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information until notice to said parties has been given, but such record shall be released within a reasonable period of time unless the said third party shall have obtained a court order protecting such records as confidential.

(2) Any public record held to be exempt from disclosure which contain confidential or privileged or exempt material by a state or federal court decision, constitutional provision or statute;

(3) Records in the possession of a public body, which are developed among judges and among judges and their aides;

(4) Records in the possession of a public body, which are developed among juries concerning judicial decisions;

(5) Personnel records and applications for employment in the possession of a public body, except those which may be released to the person who made the application or with the prior written consent of the person who made the application;

(6) Test questions and answers in the possession of a public body which are used in employment examinations;

(7) Letters of recommendation in the possession of a public body respecting any application for employment;

(8) Records in the possession of a public body, which represent and constitute the work product of any attorney, representing a public body and which are related to litigation made by or against such public body or in anticipation of prospective litigation, including all communications between such attorney made in the course of an attorney/client relationship;

(9) Records in the possession of a public body which would disclose information about a person's individual tax payment or status;

(10) Appraisal information in the possession of a public body, which concern the sale or purchase of real or personal property for public purposes prior to public announcement of the purchase or sale, where the release of such records would have a detrimental effect on such sale or purchase;

(11) Test questions and answers in the possession of a public body which are to be used in future academic examinations;

(12) Letters of recommendation in the possession of a public body respecting admission to any educational agency or institution;

(13) Records in the possession of a public body which are not otherwise protected by law, that:

(i) are compiled in the process of detecting and investigating any unlawful activity or alleged unlawful activity, the disclosure of which would harm such investigation;

(ii) would reveal the identity of informants;

(iii) would prematurely release information that would impede the public body's enforcement, investigative or detection efforts in such proceedings;

(iv) would disclose investigatory techniques;

(v) would deprive a person of a right to a fair trial or an impartial adjudication;

(vi) would endanger the life or safety of a public official or law enforcement personnel; or

(vii) are matters pertaining to quality control or peer review activities;

(viii) applications for licensure in the possession of a public body except that which may be released to the person who made the application or with the prior written consent of the person who made the application;

(ix) test questions in the possessions of a public body that are to be used in the future license examinations;

(x) commercial and financial information of a proprietary nature required to be submitted to a public body by a firm, business, partnership, association, corporation, individual or other like entity; provided, however, that nothing herein shall be construed to deny access to such information submitted to a regulatory agency by a public utility that is related to the establishment of, or changes in, rates regulated by such agency.

Section 83-1.7 Responses to request.

(a) When a requested record has been identified and is available, the Mississippi Insurance Department shall notify the requestor as to where and when the record is available for inspection or copies will be available if applicable. The notification shall also advise a requestor of any applicable fees. Generally, oral requests for information not exempt from the provisions of the Act shall be acted upon and the information made available for inspection and/or copying during regular office hours to any person upon such request; provided, however, a requestor may be asked to submit in writing a request for records not customarily made available or where time or personnel restraints make it impossible to comply with such oral requests during the working day such request is made.

(b) A response denying a written request for record shall be in writing and shall include:

1. the identity of each person responsible for the denial;

2. a reference to the specific exemption or exemptions authorizing the withholding of the record with a brief explanation of how each exemption applies to the record withheld. Where more than one record has been requested and is being withheld, the foregoing information shall be provided for each record withheld; and

3. a statement of the appeal rights provided by the Act.

(c) If a requested record cannot be located from the information supplied or is known to have been destroyed or otherwise disposed of, the requestor shall be so notified.

(d) The Mississippi Insurance Department reserves the right to disseminate information by one of two methods:

a. by distributing copies of the requested materials to the requestor, or

b. by giving the requestor access to the material.

Section 83-1.8 Fees.

(a) Charges for services rendered in response to information requests shall be as follows:

1. Searching for records, per quarter hour, or any part thereof, by clerical personnel.....\$1.50

2. Nonroutine searching, per quarter hour, or any part thereof, by supervisory personnel.....\$4.00

3. Copies made by electrostatic or xerox copy machines.....\$0.25 per copy. Pages printed on front and back side shall be considered as two pages for copy charge purposes. Copies made by an outside service.....Actual Charge

4. Mailing and Postage Costs.....Actual Charge

(b) When a response to a request requires services of material for which no fee has been established, the actual cost of such services or material to the Mississippi Insurance Department may be charged, but only if the requestor has been notified of and pays such costs before they are incurred.

(c) Where an extensive number of documents are identified and collected response to a request and the requestor has not indicated in advance his willingness to pay fees as are anticipated for copies of the document, the agency shall inform the requestor that the documents are available for inspection and for subsequent copying at the established rate.

(d) A charge of \$10.00 shall be made for each seal certifying true copies of agency records in accordance with Miss. Code Ann. § 83-5-73.

(e) Search costs may be imposed even if the requested records cannot be located. No fees shall be charged for examination and review by the Mississippi Insurance Department to determine whether a record is subject to disclosure.

(f) Fees must be paid in full prior to issuance of requested copies.

(g) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, a postal money order, or cash. Remittance shall be made payable to the order of the Mississippi Insurance Department of Commissioner of Insurance and mailed or otherwise delivered to the head of the Mississippi Insurance Department. The agency will not assume responsibility for cash which is lost in the mail.

(h) A receipt for fees paid will be given only upon request. No refund will be made for services rendered.

(i) The Mississippi Insurance Department may waive all or part of any fee when it is deemed to be either in the agency's interest or in the interest of the public.

Section 83-1.9 Review of denials.

(a) When a request for records has been denied in whole or in part by the Mississippi Insurance Department, the requestor may appeal the denial to the Commissioner of Insurance or may seek immediate judicial review of the denial in the Chancery Court.

(b) An appeal to the Commissioner of Insurance shall be in writing, and shall include a statement of the circumstances, reasons or arguments advanced in support of disclosure, and a copy of any written denial issued under paragraph VII.

(c) Unless the Commissioner of Insurance otherwise directs, the Freedom of Information Officer shall act on behalf of the Commissioner of Insurance on all appeals under this section, except that in the case of initial denial by the Freedom of Information Officer, the Commissioner of Insurance or his designee shall act on the appeal.

(d) A written determination with respect to an appeal shall be made within ten (10) days of the filing of the appeal. If the records, or any segregable part thereof are found to have been improperly withheld, the Commissioner of Insurance shall order the Mississippi Insurance Department to make them available. If the agency continues to withhold the records, the requestor may seek enforcement of the order in the Chancery Court.

(e) A denial in whole or in part of a request on appeal shall set forth the exemption relied on, a brief explanation consistent with the purpose of the exemption of how the exemption applies to the records withheld, and the reasons for asserting it. The denial shall also inform the requestor of

the right of judicial review.

(f) If no determination has been dispatched at the end of a fourteen (14) working day period, the requestor may deem his request denied, and exercise his right to judicial review of the denial.

Section 83-1.10 Records maintained by agencies.

(a) The Mississippi Insurance Department shall make and maintain records pertaining to each request for information, including copies of correspondence. The material shall be filed by individual request.

(b) The Mississippi Insurance Department shall maintain a file, open to the public, which shall contain copies of all letters of denial. Such denials shall be preserved in a denial file for a period of not less than three (3) years from the date such denials are made. Said denial file shall be made available for inspection and/or copying during regular office hours to any person upon written request.

(c) Where the release of the identity of the requestor or other identifying details related to the request would constitute a clearly unwarranted invasion of personal privacy, the Mississippi Insurance Department shall delete the identifying details from the copies of the documents maintained in the public file.

(d) The Mississippi Insurance Department shall also maintain records permitting annual reporting of the following:

1. total number of requests made to the agency;
2. the total number of requests granted and denied, in whole or in part;
3. the number of times each exemption was invoked as the basis for nondisclosure;
4. the names and titles or positions of each person responsible for the denial of records and the number of instances each person was involved in a denial; and
5. the amount of fees collected and the amount of fees for duplication and search waived by the agency.

Section 83-1.11 Effective date.

The Effective Date of this Regulation is thirty (30) days from and after its adoption and filing with the Secretary of State's Office.