

**IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI**

**THE RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER**

PLAINTIFF



VS.

EDDIE JEAN CARR, CHANCERY CLERK

CAUSE NO. G2014-1885 O/3

D.C.

**MISSISSIPPI DEPARTMENT OF
CORRECTIONS**

DEFENDANT

ORDER AND OPINION

THIS MATTER is before this Court on the Roderick & Solange MacArthur Justice Center's *Complaint for Declaratory Judgment* requesting that actions and omissions taken by the Mississippi Department of Corrections be deemed a violation of the Mississippi Public Records Act and that the Mississippi Department of Corrections be required to produce public records sought by the Plaintiff. Also before the Court is a *Counterclaim* filed by the Mississippi Department of Corrections for a declaration of exempt status, or in the alternative, for a protective order which insulates the public records sought. Having heard arguments on the matter and all premises considered, the Court finds as follows:

LEGAL ANALYSIS

The Mississippi Department of Corrections ("the MDOC") is a state agency and pursuant to Section 25-61-3(a) a public body charged with housing state prisoners and carrying out executions through the use of lethal injection. The Roderick & Solange MacArthur Justice Center ("the Justice Center") is an organization charged with protecting

the 8th Amendment rights of prisoners. In doing so, the Justice Center, from time to time, requests records from the MDOC and other similar state agencies. The present case resulted from the MDOC's redacted and limited response to a public records request from the Justice Center concerning Mississippi's procedure for carrying out executions. After the MDOC produced a ten page redacted response to the Justice Center, the Justice Center filed a *Complaint* with this Court on December 30, 2014, to redress the MDOC's failure to comply with the Mississippi Public Records Act of 1983, Miss. Code Ann. Section 25-61-1 *et seq.* ("MPRA").

The MDOC produced ten pages to the Justice Center regarding the MDOC's lethal injection drugs and procedures without providing a written explanation as to any exemptions it relied upon in justifying the redactions. More specifically, and the crux of the Justice Center's case, is that the MDOC failed to disclose the name of the entity or entities providing the MDOC with lethal drugs to execute prisoners on death row. The MDOC filed an *Answer and Counterclaim* denying any violation of the MPRA and asked this Court to declare the name and other identifying information concerning the drug supplier to be confidential, privileged or otherwise exempt from the MPRA, or to, in the alternative, enter a protective order sealing any disclosure of the information. The Court agrees with the Justice Center. According to Mississippi statutes, any person shall have the right to public records absent some statutory exemption. Here, the Court finds no such exemptions exist.

The Justice Center claims the MDOC is seeking to hide from public view key details of the most serious and irrevocable penalty for criminal behavior in the State of Mississippi. The Justice Center's claim has merit. The Justice Center has a statutory right to request documents concerning Mississippi's procedure for carrying out executions pursuant to Section 25-61-5(1)(a) which states that "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." And in response, the MDOC had every obligation to answer and comply with the Justice Center's request in accordance to Section 25-61-5(1)(2) which states that "[i]f any public record contains materials which is not exempted under this chapter, the public agency shall redact the exempted and make the nonexempt material available for examination." And because the MDOC redacted information it believed was exempt and thereby confidential and privileged, the MDOC was obligated to explain their denial of information to the Justice Center, according to Section 25-61-5(1)(3) which states that "[d]enial by a public body of a request for access to or copies of public records under this chapter shall be in writing and shall contain a statement of the specific exemption relief upon by the public body for the denial." The MDOC failed to notify the Justice Center in writing and therefore violated the MPRA. Further the MDOC's reasons and arguments for redacting the information in the first place are baseless.

The MDOC admittedly withheld the identify of the entity providing lethal injection drugs and the identity of the execution team. The MDOC argues this information should not be produced because it threatens institutional security, the safety of the MDOC

law enforcement personnel and the privacy rights of the supplier. And the MDOC argues it is in the interest of the State of Mississippi to keep confidential the name of the drug supplier because to release this information would potentially hinder the MDOC from carrying out orders to execute given to it by the State. Thus, the MDOC's *Counterclaim* seeks to have this Court declare such information confidential, privileged, and thus exempt from the requirements of the MPRA. Given the facts, the Justice Center's position has merit because under Title 25, Chapter 61, there are only a few ways in which public records shall be withheld from the public and they are these:

Confidential Information, Privileged Information, Court Declared Exemption: Section 25-61-11 states that this chapter “shall not be construed to conflict with, amend, repeal or supersede any constitutional or statutory law or decision of a court of this state or the United States which at the time of this chapter is effective or thereafter specifically declares a public record to be **confidential or privileged or provides that a public record shall be exempt from the provisions of this chapter.**” (emphasis added).

Trade Secrets and Confidential Commercial or Financial Information: Section 25-61-9 states that “records furnished to public bodies by third parties which contain **trade secrets or confidential commercial or financial information shall not be subject to inspection...until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential.**” (emphasis added).

Accordingly and to recap, in order for a public agency to rightly withhold information during a public records request that information must be: 1) confidential; 2) privileged; 3) contain trade secrets; 4) be confidential commercial information; 5) be confidential financial information; and/or 6) exempt by declaration of the court. Based on the facts, the Court concludes none of these avenues apply to the road the MDOC is traveling down.

The Justice Center's request to the MDOC concerned, in short, protocols and regulations used when carrying out executions, drugs used or considered for executions and their expiration dates, the chain of custody of such drugs, purchase activity related to these drugs, the manufacturers and distributors of these drugs, any correspondence with third parties regarding any such activity, including the names of entities the MDOC engages to purchase drugs used during executions. The MDOC claims the release of this information will threaten institutional security, the safety of the MDOC law enforcement personnel, the privacy rights of the supplier and will hinder the MDOC from carrying out orders to execute given to it by the State of Mississippi. Four words come to mind regarding the MDOC's reasons to protect this so-called sensitive information: nature of the beast.

Any time polar opposite views regarding constitutional rights are expressed, opinions will vary. In the present case, the underlying issue, a sub part to the main issue of public records requests, is the use of lethal drugs that end the lives of death row prisoners. The Justice Center is acting as a gatekeeper for death row prisoners, scanning public body documents, searching for ways to ensure the 8th Amendment rights of prisoners are not

violated. But the MDOC and entities like it respond to these request declaring the information to be confidential and privileged, when in reality the information is simply put, controversial. The information simply ignites an already controversial blend of constitutional rights and complex opinions. But given that executions are controversial and inflame a percent of people in this country, is not a valid reason for denying the public information about executions, that will happen regardless. It is the nature of the beast for executions to rile up fear in individuals who take part in the process leading to or during an execution. The names of those involved, be it the executioner, the pharmacy who provides the lethal drugs, down to the district attorney who prosecuted the prisoner, may be of public interest. And these individuals or entities may feel some type of way about the public knowing their identify. However, that is the nature of the very big beast we face as citizens of Mississippi where the death penalty is legal. And in this case there is no evidence that shows any information requested by the Justice Center contains any confidential or privileged information. There is no evidence that the information requested contains a third party's trade secrets. And there is no evidence that shows any confidential financial information is at stake of being revealed. All that is present in this case is fear. There is stone cold fear that if names are released threats will be made and ultimatums will be given and people and entities will suffer harm. But that's all that is present here. Fear. And while protective orders tend to confine information from being disseminated, the issue in this case is whether the information is sensitive enough to be sealed and withheld from the public in the first place. The Court finds it is not.

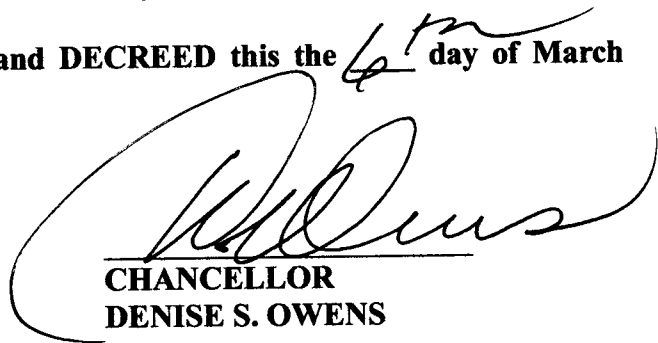
The Justice Center, Michelle Byrom and Charles Crawford were plaintiffs in an action filed last year in the Hinds County Chancery Court against the MDOC with nearly identical facts. In Cause Number 2014-261, the Plaintiffs revealed that they had been able to identify the supplier of the MDOC's lethal injection drugs through documents found on a State website, transparency.mississippi.gov. The Justice Center referenced this case during the hearing in this matter and testified that they were able to look at the MDOC's very public financial report to determine the name of the drug supplier. This fact alone leads the Court to believe that if any information held by the MDOC about the drug supplier contained trade secrets or confidential or privileged information it would not be so easily obtainable by the Justice Center. The Justice Center could presumptively just find the information online again. And because the Justice Center was able to find this information the first time, the Court believes the information was not that confidential. The State Expenditures listing named the entity that sold the lethal drugs to the MDOC as a vendor. This entity had a vendor number and a transaction number for the drugs it sold to the MDOC. While the MDOC testified that measures are being taken to ensure this kind of information is no longer present on a State website, the Court is of the opinion that may be difficult given the fact that the MDOC is required to disclose expenditures to the Mississippi Department of Finance. So given these facts the Court must support the Justice Center because there is no evidence pointing this Court in any direction to the contrary. Executions are controversial. And so are policies and procedures and drugs used during executions. But the Court cannot allow fear to control the flow of information from a public agency simply because of the controversial nature of the information. To rule in

such a way would violate more than just the MPRA. Due process rights of prisoners and the freedom to access information would also be in jeopardy, which this Court shall refrain from doing here.

CONCLUSION

Based on the foregoing reasons, the Court finds the Justice Center's *Complaint* is well taken and is hereby **GRANTED**. The Justice Center is entitled to attorneys' fees and should submit an affidavit of those fees within ten days from the date of this order.

SO ORDERED, ADJUDGED, and DECREED this the 6th day of March
2015.



**CHANCELLOR
DENISE S. OWENS**