

BEFORE THE MISSISSIPPI ETHICS COMMISSION

NICHOLAS GEORGALIS

COMPLAINANT

VS.

NO. R-14-016

**MISSISSIPPI BOARD OF LICENSURE
FOR PROFESSIONAL ENGINEERS
AND SURVEYORS**

RESPONDENT

FINAL ORDER

This matter came before the Mississippi Ethics Commission through a Public Records Complaint filed by Nicholas Georgalis against the Mississippi Board of Licensure for Professional Engineers and Surveyors. The Executive Director of the Board of Licensure for Professional Engineers and Surveyors responded to the Public Records Complaint.

The Ethics Commission has jurisdiction over this matter pursuant to Section 25-61-13, Miss. Code of 1972. The Ethics Commission voted on a Preliminary Report and Recommendation at its meeting on January 9, 2015. After receiving the Preliminary Report and Recommendation of the hearing officer, the Board of Licensure for Professional Engineers and Surveyors determined not to file an objection to the findings or conclusions therein. This Final Order is entered in accordance with Rule 5.6, Rules of the Mississippi Ethics Commission.

I. FINDINGS OF FACT.

1.1 The Board of Licensure for Professional Engineers and Surveyors (the “Board”) regulates the professional practices of engineering and surveying in Mississippi. See Sections 73-13-1 and 73-13-73, Miss. Code of 1972. The Board is required by law to keep “a register of all applications for licensure” which must show the following:

- (a) the name, age and residence of such applicant, (b) the date of the application, (c) the place of business of such applicant, (d) his educational and other qualifications, (e) whether or not an examination was required, (f) whether the applicant was rejected, (g) whether a certificate of licensure was granted, (h) the date of the action of the board, and (i) such other information as may be deemed necessary by the board to prepare a biennial roster

See Section 73-13-19. The Board is also required to prepare “[a biennial] roster showing the names and places of business or residence of all licensed professional engineers and licensed professional surveyors and licensed firms. . . .” See Section 73-13-21. According to its response, the Board publishes the biennial roster on its website and includes “the licensees names, addresses, employers, telephone numbers, and license numbers – more information than required by the statute.” The Board does not include email addresses in the roster.

1.2 On June 24, 2014, Nicholas Georgalis submitted the following public records request to the Board:

A list of all Registered Professional Engineers in your database-

The list shall be in text format and comma delimited with the following fields:

first name
middle name
last name
State
Zip
email address
Status
PE number

1.3 The Executive Director of the Board responded that the “Board does not furnish email addresses of licensees, but the other items are available” and stated “[t]he fee for these records is \$100.” When asked, the Board cited Section 73-52-1 as the basis for refusing to include email addresses. In his public records complaint, Mr. Georgalis disputes the application of Section 73-52-1 as well as the \$100.00 fee for obtaining the records.

1.4 In response to the complaint, the Board explains that all licenses expire every December 31 and that licensees may submit their application for renewal by mail or an online process. Licensees who utilize the online renewal process “submit their email addresses to [the Board] so that an electronic receipt of their renewal fee may be automatically sent to them.” Approximately 70% of the Board’s licensees utilize the online renewal process. “The Board uses these email addresses to send the Board’s annual newsletter, and to send notices that the annual license renewal process has begun.” The Board claims Section 73-52-1 and Attorney General Opinion No. 2013-00359 provide the basis for the Board’s refusal to include email addresses in response to the request.

1.5 As it relates to the fee, the Board states that “there are over 11,000 individual licensee records and over 2,000 firm licensee records in [the] database plus at least another 10,000 records for Engineer Interns, Surveyor Inters and applications in process.” The Board reports four agency employees work to maintain the database every day. The Board also references the fees charged by the Department of Information Technology Services to design, build and host the database.

II. CONCLUSIONS OF LAW

2.1 The Mississippi Public Records Act of 1983 (the “Act”) declares that public records shall be available for inspection or copying by any person unless a statute or court decision “specifically declares” a public record to be confidential, privileged, or exempt. Section 25-61-2 and Section 25-61-11, Miss. Code of 1972. “Public records” are defined as all documents or records “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.” Section 25-61-3(b). The term “public body” includes “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.” Section 25-61-3(a).

2.2 The Board of Licensure for Professional Engineers and Surveyors is a public body and the records containing email addresses of the licensees of the Board are public records because they are used and possessed by the Board in performance of the Board's regulatory duties. The Board claims the email addresses of the licensees are exempt from production by Section 73-52-1, which provides that "[a]pplications for licensure in the possession of a public body . . . shall be exempt from the provisions of the [Public Records Act.]" The Mississippi Supreme Court has instructed that statutes which provide exemptions to the Act must be strictly construed, and any doubt must be resolved against the party asserting the exemption. See Mississippi Dept. of Wildlife, Fisheries and Parks v. Mississippi Wildlife Enforcement Officers' Ass'n, Inc., 740 So.2d 925 (Miss. 1999) (quoting 73 Am. Jur. 2d Statutes § 313, at 436-64 (1974)).

2.3 In support of its position, the Board cites Attorney General Opinion No. 2013-00359 which was provided to the Mississippi Department of Education. In that opinion, the Attorney General advised the department that information which is simply extracted from an application "retains its confidential status and the information, like the application, is exempt from disclosure under the Act." Naturally, a summary or abstract of a confidential record should retain its confidential status.

2.4 The Board maintains contact information for its licensees. The Board utilizes this contact information, including email addresses where applicable, to send newsletters and other correspondence to its licensees. The Board is required by law to maintain a register of its licensees and is also required to publish a directory or roster of its licensees. Section 73-52-1 exempts from disclosure the applications for licensure but not other public records which reflect the contact information for actual licensees of the Board.

2.5 Mr. Georgalis is not simply seeking information which is pulled or summarized from applications submitted to the Board. Basic contact information maintained by the Board concerning its professional licensees, such as name, mailing address, phone number, and email address are not protected from disclosure under Section 73-52-1. Therefore, the Board must produce the records requested, including email addresses, as provided in Section 25-61-5.

2.6 Mr. Georgalis also objects to the fee of \$100.00 requested by the Board. As set forth in the facts above, the Board provided the basis of the fee charged for the records requested. This explanation, while not elaborate, appears well-reasoned, and the amount is proper under the circumstances.

III. CONCLUSION

The Board of Licensure for Professional Engineers and Surveyors is ordered to produce public records reflecting the contact information, including email addresses, of registered professional engineers to Mr. Georgalis upon receipt of the \$100.00 fee requested by the Board.

ORDERED this the 22nd day of May 2015.

CHRIS GRAHAM, Hearing Officer
Mississippi Ethics Commission