



Lynn Fitch
ATTORNEY GENERAL

PAYTON W. ACY

SPECIAL ASSISTANT ATTORNEY GENERAL

payton.acy@ago.ms.gov

601.359.7600

April 23, 2025

Mr. Joshua Wilson
Community Liaison
Roy Howard Community Journalism Center
118 College Dr. Box 5103
Hattiesburg, MS 39406

Via Email: Joshua.Wilson@usm.edu

Re: Public Records Request
Hanshaw Road Bridge

Dear Mr. Wilson:

This office represents the Office of State Aid Road Construction ("OSARC") and the Mississippi Transportation Commission/Mississippi Department of Transportation ("MDOT"). We are in receipt of your April 21, 2025, and April 22, 2025, email correspondence regarding the above-referenced public records request. Specifically, you refer to the denial of your April 10, 2025, request for "access to all inspection records for the Hanshaw Bridge from January 1, 2019, through the present. This request includes: Routine or special inspection reports, structural evaluations or engineering assessments, maintenance reviews or safety audits, reports identifying defects, issues, or recommended repairs, and the name of any inspecting agency or contractor" under 23 U.S.C.A. § 407 and Miss. Code Ann. § 25-61-11. You note that you are "appealing the decision and seeking clarification on the scope of the denial."

23 U.S.C.A. § 407 provides: "Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings, pursuant to sections 130, 144, and 148 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data."

In addition, under state law, the Mississippi Public Records Act "shall not be construed to conflict with, amend, repeal or supersede any constitutional law, state or federal statutory law, or decision of a court of this state or the United States which at the time this chapter is

Mr. Joshua Wilson
Community Liaison
Roy Howard Community Journalism Center
April 23, 2025
Page 2

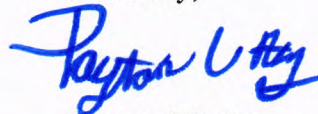
effective or thereafter specifically declares a public record to be confidential **or privileged**, or provides that a public record shall be exempt from the provisions of this chapter.” Miss. Code § 25-61-11 (emphasis added).

The federal privilege at issue was specifically enacted for the purpose of encouraging the necessary information-gathering by the states to improve safety under federal transportation programs. With respect to the statute related to bridge inspections (cited in 23 U.S.C.A. § 407), Congress specifically found that, “...continued improvement to bridge conditions is essential to protect the safety of the traveling public and allow for the efficient movement of people and goods on which the economy of the United States relies; and...the systematic preventative maintenance of bridges, and replacement and rehabilitation of deficient bridges, should be undertaken through an overall asset management approach to transportation investment.” See 23 U.S.C.A. § 144(a)(1)(A-B). Moreover, the purposes accomplished by these inspections are specifically declared by Congress to be “in the vital interest of the United States.” See 23 U.S.C.A. §144(a)(2).

To use a state sunshine law to usurp this federal statutory requirement/privilege by releasing information that is not otherwise subject to discovery would violate the stated intent of the underlying federal law (which is to encourage the collection of safety information as part of a systemic approach to federal safety projects funded by federal transportation dollars). Furthermore, the Mississippi Public Records Act does not allow for different outcomes based on the reason for the request or the occupation of the requesting party; it only addresses whether a record is subject to disclosure or not.

In summary, to provide the clarification you have requested, this information is unquestionably privileged under federal statute; therefore, it is not subject to disclosure under the Mississippi Public Records Act. For this reason (and without waiving any other applicable legal justifications) your public records request was denied. *See, Pierce County Washington v. Guillen, et al.*, 123 S. Ct. 720, 722-23 (upholding the constitutionality of the federal privilege [formerly 23 U.S.C.A. § 409, now 23 U.S.C.A. § 407] in a case where the State of Washington withheld similar materials under its state Public Disclosure Act, and noting the reasonable belief of Congress that this privilege “would result in more diligent collection efforts, more candid discussions of hazardous locations, better informed decision making, and greater safety on the Nation’s roads...”).

Sincerely,



Payton W. Acy

PWA/jch

Cc: Harry Lee James, State Aid Engineer
Evan Baronich