

IN THE CHANCERY COURT OF FORREST COUNTY, MISSISSIPPI

Chauncey M. DePree, Jr., )  
 )  
Plaintiff )  
 )  
v. )  
 )  
University of Southern Mississippi, )  
University of Southern Mississippi )  
Foundation )  
 )  
Defendant. )

Case #: 06-0198-GN-TH

F I L E D  
COPY  
MAR 24 2006

*Jimmy C. Howard*  
Chancery Clerk

Serve: Attorney General for the State of Mississippi  
MS Attorney General's Office  
Carroll Gartin Justice Building  
450 High Street  
Jackson, MS 39201

Timothy A. Ryan, Director  
University of Southern Mississippi Foundation  
118 College Drive #10026  
Hattiesburg, MS 39406-0001

**COMPLAINT**

Comes now the Plaintiff, Chauncey M. DePree, Jr. by and through counsel, and files this his Complaint against Defendants and for cause of action would show unto the Court as follows:

**I. JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction. See, e.g., Article 6, § 159 Mississippi Constitution of 1890 and Miss. Code § 9-5-81.
2. This Court has jurisdiction of the parties.
3. This Court is the proper venue for this action. See, e.g. Miss. Code §§ 11-5-1, 25-61-13.

## II. PARTIES

4. Plaintiff, Chauncey M. DePree, Jr. is an adult resident citizen residing at 24 Cane Cove, Hattiesburg, Mississippi.

5. Defendant, University of Southern Mississippi (hereinafter "USM"), is a public body of the State of Mississippi which is located in Forrest County, Mississippi. Defendant has possession and/or control over the records and documents sought by Plaintiff. Defendant has refused to comply with Plaintiff's lawful requests and to obey the clear mandate of the Mississippi Public Records Act of 1983.

6. Defendant, University of Southern Mississippi Foundation (hereinafter "USM Foundation"), is a government body, and as such its records are public records subject to disclosure. Alternatively, USM Foundation is a fiduciary with records relating to the investment and use of public funds in its custody. Alternatively, USM, with the express approval of the Board of Trustees of the Institutions of Higher Learning (hereinafter "Board of Trustees") have attempted to contract away one of its functions to a purported nongovernmental body in an effort to avoid disclosure of what would otherwise be a public record.

## III. STATEMENT OF FACTS AND CAUSE OF ACTION

7. On March 1, 2006, Plaintiff delivered to USM and USM Foundation a request for access to public documents in the custody and control of Defendant. (Exhibit 1)

8. Defendants, by and through the University's counsel, have responded to the request contained in Exhibit 1, and has refused to produce most documents which were requested. (Exhibit 2)

9. USM Foundation was formed in 1959 to govern the fund-raising efforts of a group of alumni, and first operated under the management of the Alumni Association. In 1987, Articles of

Incorporation were drafted and approved, setting up a separate not-for-profit corporation for The University of Southern Mississippi Foundation.

10. In accordance with its Articles of Incorporation, USM Foundation is to be administered and operated exclusively for the benefit of USM.
11. The purpose of USM Foundation is to solicit, invest, manage, administer and recognize private gifts which support the building of endowments and the addressing of the educational, research and service missions of USM.
12. All such private gifts are for the use and benefit of USM and other organizations organized and operated for the support and benefit of USM.
13. The President and Chief Financial Officer of USM are ex-officio, non-voting members of USM Foundation Board of Directors.
14. USM provides to USM Foundation all personnel necessary for the performance of USM Foundation's duties. The compensation of USM Foundation personnel, together with all fringe benefits, employment taxes, and other costs thereof, are set and paid by USM. All such personnel are under the full supervision and control of USM and are for all purposes considered employees of USM. The USM Foundation personnel are also members of the Mississippi Public Employee Retirement System (PERS).
15. USM provides offices and utilities for the performance of USM Foundation's functions. USM provides technology support service as well as online access to University files.
16. USM Foundation is allowed to, and does in fact, use the USM name, logo, and website.
17. The organizational chart of USM reflects USM Foundation as a unit reporting directly to the President of USM.

18. The President of USM is the direct reporting supervisor of the Director of USM Foundation.
19. Although USM and USM Foundation, through University counsel, contends that USM Foundation is not a part of USM, but rather a wholly independent and private not-for-profit corporation organized to raise and manage private gift support for the exclusive benefit of USM, its website represents to the public and potential donors “that [USM Foundation] serves as a fiduciary of private funds donated to Southern Miss.”
20. USM makes determinations as to what information in the possession of USM Foundation will or will not be disclosed.
21. As required by the Board of Trustees, USM Foundation and USM have entered into an Operating Agreement. The Agreement mandates that USM Foundation shall look to USM for determination of specific needs and programs USM Foundation plans and manages as a part of its fundraising programs.
22. Under the terms of the Operating Agreement between USM and USM Foundation, USM Foundation “may provide supplemental compensation to the University President at the discretion of the President of the University and USM Foundation’s Board of Directors and may provide funds from USM Foundation’s operating budget for University use. Included may be funds designated for the President’s office for discretionary use.”
23. USM Foundation is performing a government function, and therefore its records are subject to disclosure.
24. The Open Records Act was enacted for the benefit of the public and is to be construed in favor of the public. “Openness in government is the public policy of this State.” *Mayor & Alderman v. Vicksburg Printing & Publishing Co.*, 434 So.2d 1333 (Miss. 1983).

25. Public records are defined as “all books, records, papers, accounts... 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.” Mississippi Code, Section 25-61-3.
26. The right of persons to view public records is to be interpreted liberally to provide broad public access to public records. Exceptions to the general rules of disclosure are to be narrowly construed.
27. There is no provision of law that permits USM, a government body, to prevent the examination or copying of public records by contracting with a purported non-governmental body such as USM Foundation, to perform any of its duties or functions.
28. USM Foundation’s function, history, purpose, activities and inherent ties to USM render it a government body, notwithstanding its claim of a formal status as a private not-for-profit corporation.
29. In the alternative, USM Foundation is performing a government function by virtue of its Operating Agreement with USM. Therefore, the Open Records Act mandates disclosure. A government body may not outsource one or more of its functions to a private corporation and thereby secret its activities from the public.
30. Successful fundraising is recognized by USM as a vital function of USM and an integral part of its continuing viability. USM Foundation’s activities support a myriad of USM programs, scholarships, facilities, and projects. USM recognizes and publicly acknowledges that the receipt and solicitation of gifts is an indispensable function of USM as an institution of higher learning.

31. The power to seek and accept donations relates strictly to USM's academic functions.

32. The Board of Trustees through its bylaws and procedures acknowledge the need for university foundations and establishes a framework for that relationship, including the requirement of a contract between the foundations and universities in the State of Mississippi.

33. USM Foundation conducts an essential purpose for the funding and operations of USM and by virtue of that fact enjoys the continued support of USM.

34. In executing the Operating Agreement, USM, a government body, with the express approval of another government body, the Board of Trustees, has attempted to contract away one of its functions – the ability to raise money – to what is claimed to be a non-government body. In so doing, the Board of Trustees has attempted to avoid disclosure of what would otherwise be public records. In sum, a government body, USM, with the approval of another government body, the Board of Trustees, has contracted with what is purported to be a non-governmental body, USM Foundation, to perform a government function for and on behalf of USM. Accordingly, the Open Records Act mandates disclosure.

35. Records in the possession of USM Foundation are public records subject to inspection. Miss. Code § 25-61-3(b). Defendants' refusal to produce the documents in the possession of USM Foundation and requested by Plaintiff constitutes a violation of law.

36. Plaintiff has complied with all requirements to pay estimated charges.

#### **IV. RELIEF REQUESTED**

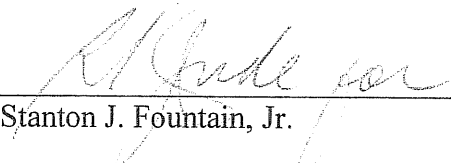
WHEREFORE, Plaintiff prays that this Honorable Court:

1. Declare that Defendants' refusal to disclose the requested records is unlawful.
2. Order Defendants to make the requested records available to Plaintiff.

4. Award Plaintiff statutory damages of \$100.00 as permitted by Miss. Code § 25-61-15, as well as attorney's fees and other costs associated with bringing this suit.
5. Grant such other and further relief which is just and proper.

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of March, 2006.

By:

  
\_\_\_\_\_  
Stanton J. Fountain, Jr.

Stanton J. Fountain, Jr., MSB # 5447  
Attorney at Law  
963 Howard Ave.  
Post Office Box 817  
Biloxi, MS 39533  
Telephone: (228) 374-3327  
Facsimile: (228) 435-1641

Rebecca Kathryn Jude, MSB # 3248  
JUDE & JUDE, PLLC  
6424 U. S. Hwy 98 West, Suite 50  
P. O. Box 17468  
Hattiesburg, MS 39404-7468  
Telephone: (601) 579-8411  
Facsimile: (601) 579-8461

**CHAUNCEY M. DEPREE, JR.  
24 CANE COVE  
HATTIESBURG, MS 39402  
(601) 268-0372**

March 1, 2006

**VIA CERTIFIED MAIL**

Dr. Thomas C. Meredith, Commissioner  
Board of Trustees of State Institutions of Higher Learning  
3825 Ridgewood Road  
Jackson, MS 39211  
Telephone 601-432-6333

Mr. Robert Toy McLaughlin  
Inverness Asset Management Inc.  
31 Inverness Center Pkwy # 310  
Birmingham, AL 35242

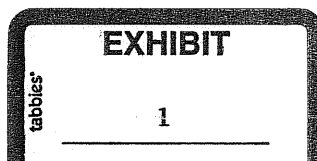
Mr. Timothy A. Ryan, Executive Director  
University of Southern Mississippi Foundation  
118 College Drive  
University of Southern Mississippi  
Hattiesburg, MS 39406

Re: Request for public records

Dear Dr. Meredith and Messrs. McLaughlin and Ryan:

Pursuant to the Mississippi Public Records Act of 1983, including Miss. Code Ann. §25-1-1000 and IHL Policy 301.0803, I request access to the following records in the possession of the University of Southern Mississippi Foundation ("Foundation"), an entity under the control and direction of the University of Southern Mississippi, which is an institution under the Institutions of Higher Learning's jurisdiction and control:

- 1) Audit reports for the Foundation for fiscal years 2002, 2003, 2004 and 2005.
- 2) All records, agreements, contracts between the Foundation or any of its subdivisions and Dr. James Crockett with regard to the publication of his book, *Operation Pretense: The FBI's Sting on County Corruption in Mississippi*. This request includes, but is not be limited to, (1) records of funds advanced or paid by Foundation or any of its subdivisions to support or fund publication of *Operation Pretense*, (2) agreements to reimburse





**PAUL RICHARD LAMBERT, PLLC**  
ATTORNEY AT LAW

MAILING ADDRESS:  
119 HARDY STREET  
HATTIESBURG, MS 39401

TELEPHONE (601) 544-1215  
FAX (601) 544-1448  
email: rick\_lambert@comcast.net

March 15, 2006

Dr. Chauncey M. DePree, Jr.  
24 Cane Cove  
Hattiesburg, MS 39402

Re: Public Records Request

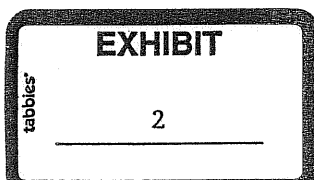
Dear Dr. DePree:

Your letter dated March 1, 2006, addressed to Dr. Meredith, Mr. McLaughlin and Mr. Ryan, requesting certain documents pursuant to the Mississippi Public Records Act has been referred to me for response.

First of all, it is my understanding that all of the documents you have requested, if any exist, are in the possession of The University of Southern Mississippi (USM) or The University of Southern Mississippi Foundation (Foundation). Therefore, the public records request to Dr. Meredith or Mr. McLaughlin is inappropriate and unnecessary.

As previously indicated to your attorney, the Foundation is not required to comply with the provisions of the Mississippi Public Records Act. However, without waiving this position, and in the spirit of cooperation, the Foundation will provide you with copies of the following documents:

1. Audit reports for the Foundation for fiscal years 2002, 2003, 2004 and 2005.
2. No such records exist.
3. The documents requested in item 3 are confidential and not subject to disclosure pursuant to the Mississippi Public Records Act.
4. The documents requested in item 4 are confidential and not subject to disclosure pursuant to the Mississippi Public Records Act.
5. The documents requested in item 5 are confidential and not subject to disclosure pursuant to the Mississippi Public Records Act.
6. No such documents exist.



**PAUL RICHARD LAMBERT, PLLC**

Dr. Chauncey A. DePree  
March 15, 2006  
Page Two

7. Any documents relating to contributions made to the Foundation by you will be furnished pursuant to your request. The Foundation considers these documents privileged and confidential and not subject to production pursuant to the Mississippi Public Records Act, however, since you are requesting documents relative to your contributions only, the Foundation will furnish this information to you.

The above referenced information will be furnished to you on or before April 1, 2006. The charge for the production of these documents will be furnished by separate cover.

If you have questions or any additional information to supplement your letter of March 1, 2006, please do not hesitate to give me a call.

Sincerely,



PAUL RICHARD LAMBERT

PRL/lh

cc: Dr. Thomas C. Meredith  
Mr. Robert Toy McLaughlin  
Mr. Timothy A. Ryan  
Dr. Shelby F. Thames  
Lee Gore, Esquire  
Stanton Fountain, Jr., Esquire