



## Louisiana Public Records Law

### I. Right of Access

- A. La. Const. art. XII Section 3 reads: No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.
- B. The Louisiana Public Records Act can be found at La. R.S. 44:1 *et seq.*
- C. Under La. R.S. 44:32(A), the right of access extends to any person of the age of majority.

### II. What is a public record?

- A. La. R.S. 44:1(A)(2)(a) lays out the definition of what a public record is:
  - All books, records, writings, accounts...recordings, memoranda, and papers...or 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...performed by or under the authority of the constitution or laws of this state...

### III. Interpretation

- A. Similarly, the Louisiana Supreme Court has instructed liberal construction of the Public Records Act, with any doubt being resolved in favor of access.
- B. Unless an exception to the Public Records Act applies, a custodian has a responsibility and duty to provide access to public records, and the public has a right to copy, inspect or reproduce public records. *Title Research Corp. v. Rausch*, 450 So. 2d 933, 936 (La. 1984).

### IV. Custodians

- A. La. R.S. 44:1(A)(3)
  - The public official or head of any public body having custody or control of a public record, or a representative specifically authorized by him to respond to requests to inspect any such public records
- B. La. R.S. 44:31(A)
  - Providing access to public records is a responsibility and duty of the appointive or elective office of a custodian and his employees.
- C. La. R.S. 44:33.1
  - The public body shall make the contact information of the custodian available “in a manner that will allow a member of the public to quickly determine the appropriate person to whom a public records request should be submitted, including by placing such information on the internet.”

**V. Public Bodies**

## A. La. R.S. 44:1(A)(1)

- “Public body” means any branch, department, office, agency, board, commission, district, governing authority, political subdivision, or any committee, subcommittee, advisory board, or task force thereof, any other instrumentality of state, parish, or municipal government, including a public or quasi-public nonprofit corporation designated as an entity to perform a governmental or proprietary function, or an affiliate of a housing authority.

**VI. Custodian’s Obligations**

- A. A custodian cannot inquire as to the reason the request is being made. La. R.S. 44:32(A); *Ferguson v. La. Dep’t of Educ.*, 14-0032 (La.App. 1 Cir. 9/19/14), 2014 La. App. Unpub. LEXIS 509, 8.
- B. A custodian has a duty to segregate public records from non-public records. La. R.S. 44:32(B).
- C. The burden of proving a public record is not subject to disclosure rests with the custodian. La. R.S. 44:31(B), La. R.S. 44:32(D)

**VII. Right to Inspect Public Records**

- A. The right of access includes the right to inspect, copy or reproduce any public record except as otherwise provided by law. *Title Research Corp.*, 450 So. 2d 933, 936 (La. 1984). See also, *Johnson v. Broussard*, 2012-1982 (La. App. 1 Cir. 6/7/13), 118 So. 3d 1249.
- B. No fee shall be charged to any person to examine or review any public records, except as provided in this Section, and no fee shall be charged for examination or review to determine if a record is subject to disclosure, except as may be determined by a court of competent jurisdiction. La. RS. 44:32(C)(3).
- C. No fee shall be charged to any person to examine or review any public records, except as provided in this Section, and no fee shall be charged for examination or review to determine if a record is subject to disclosure, except as may be determined by a court of competent jurisdiction. La. RS. 44:32(C)(3).

**VIII. Electronic Records**

- A. *Johnson v. Broussard*, 2012-1982 (La. App. 1 Cir. 6/7/13), 118 So. 3d 1249, 1256.
- Nothing in the Louisiana Public Records Act specifically prohibits reproduction of public records by electronic format.
  - To allow the public entity to create records using information technology and then deny the use of that same technology to the public would strike directly at the heart of the public's fundamental right of access to public records.
  - When confronted with public records of goliath proportions, the average citizen's fundamental right of access would prove illusive if he is denied the opportunity to use the very technology which helped create the overwhelming amount of information.

- To reproduce over 13,000 e-mails on paper, when other safe, efficient, and reasonable means are available, is unnecessarily laborious, costly, wasteful, and conflicts with the legislative intent of making public records as available as possible.
- See also, *Johnson v. City of Pineville*, 2008-1234 (La. App. 3 Cir. 4/8/13), 9 So. 3d 313, 318-320.

#### **IX. Other Notes for Custodians**

- A. There is no duty to create a record where none exist. *Nungesser v. Brown*, 1995-3005 (La. 2/16/96), 667 So. 2d 1036.
- B. A custodian need only produce existing records containing the requested information and is not required to create new documents in the format requested. *Williams Law Firm v. Bd. Of Supervisors*, 2003-0079 (La. App. 1 Cir. 4/2/04), 878 So. 2d 557, 563.
- C. A custodian has a duty to preserve the records in custody and to inform the requestor if the records are not in custody. La. R.S. 44:34.
- D. Non-permanent records shall be preserved for three years unless otherwise directed by statute or by approval of the state archivist. La. R.S. 44:36.

#### **X. Timeline to Respond**

- A. La. R.S. 44:33(B)(1) provides that if the public record applied for is immediately available, the public record shall be immediately presented to the authorized persona applying for it.
- B. La. R.S. 44:33(B)(1) provides that if the public record is not immediately available because it is in active use at the time of application, this shall be certified in writing and a time shall be set within three days for reviewing the record.
- C. La. R.S. 44:35(A) allows the custodian to send an estimate of the time reasonably necessary for collection, segregation, redaction, examination, or review of a records request.
- D. La. R.S. 44:32(D) states an exception shall be asserted within three days, exclusive of Saturdays, Sundays and legal public holidays, of the receipt of the request. An exception must be asserted in writing and refer to the provision of law that excepts such record.
- E. La. R.S. 44:33(A)(2) directs that, “if... segregating the record would be unreasonably burdensome or expensive... the official shall so state in writing and shall state the location of the requested record.

#### **XI. Unreasonably Burdensome Requests**

- A. *In re Public Records Request of Beckett v. Serpas*, 2012-1349 (La. App. 4 Cir. 3/20/13), 112 So. 3d 348, 353.
  - It is well established that the examination of records or requests for reproduction cannot be so burdensome as to interfere with the operation of the custodian's constitutional and legal duties. See also La. R.S. 44:33(A)(2).

- Any restriction or limitation imposed by the custodian places the burden on the custodian to justify the restriction or limitation.
- Given the particular facts and circumstances of that case, the volume of the records requested and the manner in which the files were categorized, the city was able to demonstrate that segregating ten years of internal investigative files would be unreasonably burdensome.

## **XII. Charges**

### **A. La. R.S. 44:32(C)(2)**

- Fees for copies in the custody of state agencies shall be charged according to the uniform fee schedule adopted by the commissioner of administration, as provided by R.S. 39:241.
- See also, Louisiana Division of Administration's Uniform Fee Schedule at LAC. 4:I.301.
- Generally, paper copies are \$0.25 per page, per side.
- Copies of records may be furnished without charge or at a reduced charge to indigent citizens of this state or the persons whose use of such copies, as determined by the custodian, will be limited to a public purpose, including but not limited to use in a hearing before any governmental regulatory commission.

### **B. La. R.S. 44:32(C)(3)**

- No fee shall be charged to any person to examine or review any public records, except as provided in this Section, and no fee shall be charged for examination or review to determine if a record is subject to disclosure, except as may be determined by a court of competent jurisdiction.

## **XIII. Exceptions**

### **A. La. R.S. 44:4.1**

- In order to foster the people's awareness, the legislature declares that all exceptions, exemptions, and limitations to the laws pertaining to public records shall be provided for in this Chapter or the Constitution of Louisiana. Any exception, exemption, and limitation to the laws pertaining to public records not provided for in this Chapter or in the Constitution of Louisiana shall have no effect.
- Section (B) lists the applicable Revised Statutes and Code articles that provide exceptions to the Public Records Act.
- Section (C) incorporates the work product exceptions that extend to attorneys and experts.

### **B. Lawyer-client Communication and Common Interest Privileges. La. C.E. art 506.**

### **C. Deliberative Process Privilege. *La. Dep't of Ins. v. Theriot*, 2010-1476 (La. App. 1 Cir. 5/3/11), 64 So. 3d 854; *Kyle v. La. PSC*, 2003-0584 (La. App. 1 Cir. 4/2/04), 878 So. 2d 650, 659).**

### **D. Records Relevant to Juveniles**

- La. R.S. 44:3(A)(6) & (J)(2)
- La. R.S. 14:133.7, helpfully supplies a description of confidential and personally identifying information in Section (E)(6).

### **E. Health Records**

- La. R.S. 44:7
- F. Records of the Coroner
- La. R.S. 44:19

#### **XIV. Exceptions Regarding Financial Records**

- A. La. R.S. 44:4
- (1) Tax Returns (and information contained therein)
  - (2) Name and other information concerning persons applying for or receiving old age assistance, aid to the blind, or aid to dependent children.
  - (3) Records in the custody of an employee of the state whose duties are to investigate the business of a private person, firm, or corporation, and are in their nature confidential.
- B. La. R.S. 46:56
- C. La. R.S. 14:67.16, helpfully provides a list of the types of personally identifying information, in the context of identity theft.

#### **XV. Proprietary Information**

- A. La. R.S. 44:3.2
- “Nothing in chapter shall be construed to require the disclosure of proprietary or trade secret information...”
- B. La. R.S. 51:1431(4) defines trade secret information.
- Information, including a formula, pattern, compilation, program, device, method, technique, or process, that:
    - a) Derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and
    - b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
- B. See also, *Raiser v. City of New Orleans*, 2016-0930 (La. App. 4 Cir 6/14/17), 222 So. 3d 806, 816-817.

#### **XVI. Personnel Files**

- A. Job titles and salaries of government employees are a matter of public record. La. Atty. Gen. Op No. 09-0298.
- B. Performance evaluations of government employees are confidential. *Trahan v. Larivee*, 1978-6810 (La. App. 3 Cir. 11/15/78), 365 So. 2d 294, 300.
- C. Government employees may “op-in” or “elect” to keep personally identifying information confidential. La. R.S. 44:11.
- D. All medical records, claim forms, life insurance applications, requests for the payment of benefits, and all other health records of employees and dependents enrolled in the Office of Group Benefits programs pursuant to the provisions of R.S. 42:821 or R.S. 42:851, or an employee benefit plan or program of a political subdivision, which are in the custody or control of the Office of Group Benefits, the board of trustees of a program of a political subdivision, a plan administrator, or any

duly appointed representative are exempt from the provisions of this Chapter. La. R.S. 44:12(A).

- E. Contracts are generally considered public record, though proprietary information is not subject to production. La. R.S. 3.2, La. R.S. 51: 1431(4).
- F. A presumption of confidentiality should not be based exclusively on the execution of a confidentiality agreement. La. Atty. Gen. Op. No. 01-0436A.

## **XVII. The Right to Privacy**

- A. La. Const. art. I Section 5
  - When determining whether a record is subject to the right of privacy, ask the following questions:
  - Does the individual have a subjective expectation of privacy in the information?
  - Is this expectation of privacy one that society at large is prepared to recognize as reasonable?
- B. If the court determines that both an objective and subjective expectation of privacy has been established, they next weigh the significance of that privacy interest against the public's right to have access to that information. *Capital City Press v. East Baton Rouge Parish Metro. Council*, 1996-1979 (La. 7/01/97), 696 So. 2d 562, 566.
- C. The Louisiana Supreme Court has held that "when competing constitutional interests are asserted, these interests must be balanced on a case by case basis." *Shane v. Parish of Jefferson*, 2014-2225 (La. 12/8/15), 209 So. 3d 726, 742, citing *Copeland v. Copeland*, 2007-0177 (La. 10/16/07), 966 So.2d 1040, 1046-47.
- D. In *Shane*, information considered private included: names, addresses, email addresses, phone numbers, and places of employment, within the sender, recipient, address, and body sections of the emails, as well as within any attachments to the emails. (emails sent by private individual). *Shane*, at 733.
- E. In *Cull*, information considered public record included: name, address, phone number, date of birth, age, sex, marital status, number of children, length of residency in Orleans Parish, citizenship status, information regarding any felony convictions, occupation, employer's name, address and phone number, and supervisor's name. (information submitted through jury summons form). *Cull v. Cadaro*, 2010-1546 (La. App. 4 Cir. 6/1/11), 68 So. 3d 1161, 1164.

## **XVIII. Challenges with Technology**

- A. Email Communications
  - All records used, prepared, possessed, retained for use in the conduct, transaction, or performance of any business... performed by or under the authority of the constitution or laws of this state... are public records. La. R.S. 44:1(A)(2)(a).
  - La. R.S. 44:402(4) also directs that records generated or received under law or in connection with the transaction of official business, or preserved by an agency or political subdivision because of other informational or legal value.
  - Personal communications unrelated to public business are not public even if sent on a public email account. La. Atty. Gen. Op. No. 10-0272.
  - Public business communications conducted on private email accounts and devices are public record. La. Atty. Gen. Op. No. 01-155.

- See also, Electronic Mail Retention Policy, Louisiana State Archives Records Management Program, Revised: 2018
- <https://www.sos.la.gov/HistoricalResources/ManagingRecords/ViewResources>

#### B. Database Information

- There is no duty to create record or produce records in a format other than the format in which records already exist. *Nungesser v. Brown*, 1995-3005 (La. 2/16/96), 667 So. 2d 1036; *Williams Law Firm v. Bd. Of Supervisors*, 2003-0079 (La. App. 1 Cir. 4/2/04), 878 So. 2d 557.
- Also note that requests for this information may amount to an unduly burdensome records request, which may lead to asserting La. R.S. 44:33(A)(2), though the burden rests on the custodian to justify the determination.

#### C. The definition of records provided in La. R.S. 44:1 could conceivably include information in a database that may be easily exported to CSV / .xlsx files. *Johnson v. Broussard*, 2012-1982 (La. App. 1 Cir. 6/7/13), 118 So. 3d 1249; *Johnson v. City of Pineville*, 2008-1234 (La. App. 3 Cir. 4/8/13), 9 So. 3d 313.

#### D. Social Media

- The nature of records generated through the use of a social media account depends on the public or private nature of the use. La. Atty. Gen. Op. No. 18-0115.
- Note that other issues arise with muting, blocking, or banning users, and deleting comments. Several lawsuits alleging censorship are making their way through federal courts around the country. Reference, *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 302 F. Supp. 3d 541 (S.D.N.Y. 2018).

### **XIX. Enforcement**

- A. La. R.S. 44:35 provides that any person who has been denied the right to inspect or copy a record (either by final determination or by a failure to respond to the request for five days, exclusive of Saturdays, Sundays, and legal public holidays) may institute enforcement proceedings requesting:
- A writ of mandamus be issued;
  - Injunctive or declaratory relief; and
  - Attorney fees, costs and damages.
- B. Key provision in La. R.S. 44:35: “without receiving a determination in writing by the custodian or an estimate of the time reasonably necessary for collection, segregation, redaction, examination, or review of a records request.”
- C. Note: The Louisiana First Circuit Court of Appeal acknowledged that the charge on custodians to determine whether items are non-public records, public records, or records otherwise exempt from the LPRL is onerous in light of the potentially complex nature of the records and the time limits imposed throughout Title 44. To that effect, that court held that regardless of whether a custodian’s legal basis set forth in the notice is correct or incorrect, the LPRL authorizes a penalty only for failing to provide the notification as required by La. R.S. 44:32, not for making the wrong determination. *Deshotels v. White*, 16-0889 (La. App. 1 Cir. 8/16/17), 226 So. 3d 1211,1220, writ denied, 17-1565 (La. 12/5/17), 231 So. 3d 628.

For questions regarding the Louisiana Public Records Law, please contact our Public Records Coordinator at [PublicRecords@ag.louisiana.gov](mailto:PublicRecords@ag.louisiana.gov).

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