

Public Records Act

Council Transition Project

The Public Law Center

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Legal Origins of “Open Government”

Louisiana’s “Sunshine” Laws:

- Open Meetings Act—La. R.S. 42:11, *et seq.*
- **Public Records Act**—La. R.S. 44:1, *et seq.*



History of State Public Records Laws

- Wisconsin was the first state to enact a public records statute in 1848.
- By 1940, only 12 states had enacted laws that protected the public's access to public records.
- During the 1970's (following Watergate), many more states passed or enhanced their public records laws.

We Are Not Alone!

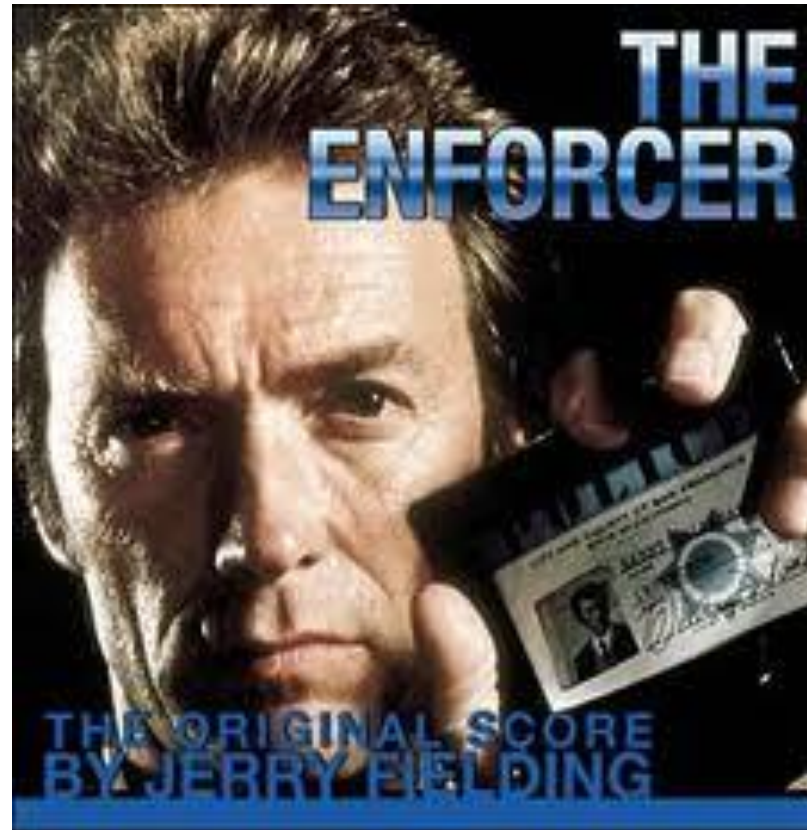


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We Are Not Alone!

- 50 of 50 states now have public records laws.
- U.S. enacted its Freedom of Information Act (FOIA) in 1966.
- FOI laws protect access to public records.
- 80+ countries have enacted FOI laws.
- “Rule of Law” means even the government is bound to comply with legal constraints.

§35. Enforcement



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- **Who**: “Any person” denied the right to inspect or copy a record—either by a custodian’s decision or after 5 days with no decision.
- **Where** and **How**: District court of custodian’s parish via mandamus, injunction, declaratory relief for attorney’s fees, costs, and damages.
- **Burden of Proof**: “the burden is on the custodian to sustain his action”

Preferential Treatment in the Courts

- Suits to enforce public record requests “tried by preference and in a summary manner.”
- On appeal, public record requests placed on preferential docket and heard “without delay, rendering a decision as soon as practicable.”
- Determined “de novo” by the court, which may view the documents in camera.
- Failure to comply is punishable as contempt.

Attorney's Fees & Damages



Attorney's Fees and Damages

- Prevailing plaintiff is awarded attorney's fees and costs for complete or partial victory.
- Custodian may be ordered to pay damages if record is "arbitrarily or capriciously withheld."
- Custodian who "unreasonably or arbitrarily failed to respond" may be ordered to pay damages *and* civil penalties of \$100 per day.
- Custodian "is personally liable" for damages and liable in solido for attorney's fees and costs.

§37. Penalties for Violation by Custodians of Records

- 1st Conviction: \$100-1000 fine or prison 1-6 mo.
- 2nd or Subsequent Conviction: \$250-2000 fine or imprisoned for 2-6 months or both.
- Penalties apply to a non-custodian “who by any conspiracy, understanding or cooperation with any other person hinders or attempts to hinder the inspection of any public records.”



What Do FOI Laws Guarantee?

Freedom of Information laws confer the right to access government documents **without being obliged to demonstrate any legal interest.** If the requested information is a public record, it must be produced in response to the request.



What is a “Public Body”?



What is a “Public Body”?

- R.S. 44:1(A)(1)—An instrumentality of state, parish, or city government, including:
 - Boards and commissions
 - Political subdivisions
 - *Committees and subcommittees*
 - *Advisory boards and task forces*
 - Public or quasi-public nonprofit corporations performing governmental or proprietary functions
 - Affiliate of a housing authority

What is a “Public Record”?



What is a “Public Record”?

- Books, records, writings, accounts, letters, memoranda, papers
- Maps, drawings, photographs
- Tapes, recordings, electronic data
- Copies, duplicates, microfilm, reproductions
- Used or prepared for use in transacting a public body’s business
- “Except as otherwise provided”

Exempted from “Public Records”



§4: Exempted from “Public Records”

- (1) Tax Returns
- (6) Legislative or Internal Auditor’s Records
- (15) Risk Management or Legal Claims
- (23) Name and Address of Law Officer
- (27) State Test Materials, Scores, and Answers
- (31) Customers’ Phone Numbers
- (33) Public School Students’ Identifying Data
- (34) Teachers’ Social Security Numbers
- (40) Security Systems
- (41) Credit Card Information

4.1 Exceptions

- “[T]he 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.”

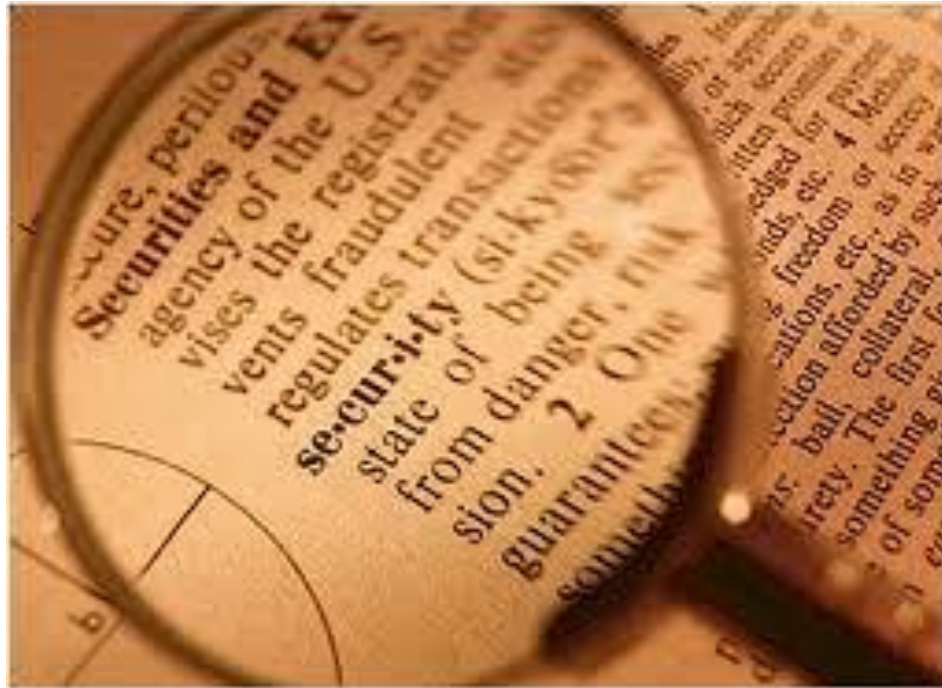
§11. Confidential Personnel Records

- Employee's Home Telephone Number
- Employee's Home Address
- Name and Account Number for Direct Deposit
- Social Security Number and direct deposit financial info; BUT may be disclosed for child support enforcement and other purposes
- Medical Records and Insurance Claims

§13. Library Records

- Governs public, academic, school, and special libraries supported by public funds
- Can't disclose registration data or documents used by patrons.
- ***BUT***
 - D. Allows disclosure to law enforcement officers
 - USA PATRIOT Act provides for disclosure of library info

§31. Right to Examine Records



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- B(1): “*any person of the age of majority* may inspect, copy, or reproduce any public record.”
- B(2): “*any person* may obtain a copy or reproduction of any public record.”
- B(3): “ The burden of proving that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian.”

§32(A). Duty to Permit Examination



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- Custodian must present the record to any person of the age of majority who requests it.
- Custodian can “make no inquiry” of the person, except for age and identification.
- Custodian cannot examine documents in the person’s possession, including copies made.
- Custodian can require the person to sign a register; maintain “vigilance” to protect record; and observe regular office hours—but must facilitate the “full exercise” of rights in the law.

§32(B). Segregate Non-Public Record

- “If any record contains material which is not a public record, the custodian may separate the nonpublic record and make the public record available for examination.”

§32(C). Copies and Fees

- Custodian **must** provide copies to persons requesting them; **may** collect reasonable fees for making copies; and **may** provide copies at no or reduced charge to indigent citizens.

Legal Question Re Public Record



§32(D). Legal Question Re Public Record

- A custodian who questions whether a requested record is a public record **must**:
 - Notify the requestor in writing within three business days after receiving the request.
 - Give reasons for the decision to withhold access.
 - Cite a reference to the legal basis for deciding that a record or portion of a record is exempt from inspection, copying, or reproduction.

§33. Availability of Records

- A(1): Custodian must segregate the requested record and make it available to the person (*court clerks and notarial records excepted*).
- A(2): But if “unreasonably burdensome or expensive” to segregate records or if “readily identifiable” and segregation is unnecessary, custodian states in writing to the requestor where the requested record is located.

§33. Availability of Records in Use

- B(1): If the record is “immediately available” and “not in active use, it must be presented to the requestor “immediately.”
 - If not immediately available because record is “in active use,” custodian must “promptly certify” in writing and “fix a day and hour within three days” for the requestor to exercise rights under this law.
- B(2): Can’t use “audit” to deny access except when “records are in active use” *by auditor*.

§34. Absence of Records

- If a public record isn't in an official's custody or control when requested, the official must certify in writing to the requestor:
 - **Why** it was taken and the exact time **when** it was taken from the official's custody and control;
 - **Where** it's currently located and **what** person currently has custody or control of it; and
 - Give detailed answers to facilitate the requestor's exercise of rights under the law.

§36. Preservation of Records

- Permanent records are required to be kept for all time (e.g., conveyance, probate, mortgage).
- Other records are kept in accordance with retention schedules set by the state archivist.
- Otherwise, “public records shall be preserved and maintained for . . . three years from the date on which the public record was made.”

Conclusions

- Louisiana's Constitution establishes a general principle of openness in government.
- Louisiana's Open Meetings and Public Records Laws are also general and inclusive; exceptions must be express.
- Violators of open meetings and public records requirements are subject to civil and criminal penalties under state and local laws and can be personally responsible for the payment of fines.



Two Additional Internet Resources

- New Orleans Satellite Government Database:
 - <http://nolasatellitegovernment.tulane.edu/>
Information regarding over 150 boards, commissions, public benefit corporations, security and development districts, and other entities that undertake public functions on behalf of the people of New Orleans.
- SPLC State Open Records Law Request Form:
 - <http://www.splc.org/legalassistance/foiletter.asp>