

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

LOUISIANA

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE

OPEN RECORDS AND MEETINGS LAWS IN

LOUISIANA

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Previously Titled
Tapping Officials' Secrets

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Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

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FOREWORD

Open records. The Louisiana Public Records Act was first enacted in 1940. Perhaps surprisingly, the statute has not been substantially rewritten since then, although the presumption of the openness of public records was enshrined in the new Louisiana constitution of 1974. It states, “No person shall be denied the right to . . . examine public documents except in cases established by law.” La. Const. art. XII, § 3.

In 1978, the Louisiana Legislature substantially rewrote the enforcement section of the Public Records Act. The 1978 amendments added various judicial remedies, including the award of attorneys’ fees and costs to prevailing private plaintiffs. The same amendments also provided that a custodian of records who arbitrarily or capriciously violates the statute may be personally liable for actual damages and shall be liable with the public body for the payment of the plaintiff’s attorneys’ fees. Acts 1978, No. 686, § 1; La. Rev. Stat. Ann. § 44:35. The 1978 amendments also revised that portion of the statute that had provided that only “state electors” and “state taxpayers” had the right to examine records. Since 1978 “any person of the age of majority” may examine records.

As with the Open Meeting Law, the Public Records Act is solidly established in Louisiana law. The core provisions are unlikely to be modified materially, except as specific enforcement problems arise. For example, the 1988 Legislature adopted legislation to specify the contents of the “initial report” of a crime. La. Rev. Stat. Ann. § 44:3(A) (4). At the same session, the Legislature amended the enforcement provisions of the Act to impose a \$100 per day civil penalty personally upon any records custodian who arbitrarily refuses to respond to a records demand within the statutory period of three working days. See La. Rev. Stat. Ann. § 44:32, 44:35(E). The amendment was proposed in response to *Hill v. Mamoulides*, 482 So. 2d 25 (La. App. 5th Cir. 1986), which held that a custodian’s unexplained failure to respond timely did not foreclose the custodian from later asserting that the requested records were not public.

The following trends are worth noting:

More often than in the past, Louisiana courts are applying the elastic notion of constitutional “privacy” to defeat records requests. Although the Louisiana Supreme Court held that there was no exemption in the state’s public record laws for employment applications, (*Capital City Press v. East Baton Rouge Parish Metropolitan Council*, 696 So. 2d 562. (La. 1997)), recent decisions have since carved out greater privacy rights for employee records in other contexts. *Eastbank Consol. Special Serv. Fire Prot. Dist. v. Crossen*, 892 So. 2d 666 (La. App. 5th Cir.), writ denied, 897 So. 2d 608 (La. 2005) (determining that personnel files, including records of all disciplinary actions, reprimands, apologies or other personnel documents should remain beyond the scope of the Public Records Act). Louisiana courts still generally protect only information “clearly private in nature” or material that if disclosed would expose someone to “public disgrace.” Furthermore,

the expectation of privacy must be objectively reasonable, and the privacy interest must be balanced against the public’s right to know. See *Angelo Iafrate Constr., L.L.C. v. State*, 879 So. 2d 250 (La. App. 1st Cir. 2004) (finding employees’ expectation of privacy in employee payroll information detailing hourly wages, hours worked, deductions and net paycheck amount outweighed public interest); *Local 100, SEIU v. Smith*, 830 So. 2d 417 (La. App. 2d. Cir.), writ dismissed, 836 So. 2d 75 (La. 2003) (disclosure of employees’ organizational affiliations violated employees’ reasonable expectation of privacy); *Broderick v. State, Dept. of Environmental Quality*, 761 So. 2d 713 (La. App. 1st Cir.), writ denied, 768 So. 2d 1284 (La. 2000) (employee grievance records are exempt from Public Records Act because the information they contain “had the potential to cause embarrassment” and the “public interest would not be further served by disclosure”). During the 2003 session, perhaps in response to these decisions, the Louisiana Legislature amended the Public Records Act to expressly exclude certain public employee documents, including direct deposit payroll information, Social Security numbers and direct deposit information from personnel files (subject to some exceptions), and all medical and insurance-related documentation in personnel files. La. Rev. Stat. Ann. § 44:11.

The Louisiana Supreme Court also created a novel exception to the Act by virtue of its “inherent authority,” holding that bar examination model answers, any materials related to the grading guidelines or an applicants’ bar examinations were also exempt from disclosure. Acknowledging that none of the exceptions enumerated under the law applied to such records and documents, the Court nevertheless reasoned that it could create an exception by virtue of the “inherent authority” vested in it by the legislature. *Bester v. Louisiana Supreme Court Comm. on Bar Admissions*, 779 So. 2d 715 (La. 2001); see also *Louisiana Supreme Court Comm. on Bar Admissions v. Roberts*, 779 So. 2d 726 (La. 2001) (restating rule set in *Bester*).

The statutory exception to the Act for documents relating to “pending criminal litigation” and “pending claims” has been narrowly interpreted to promote greater disclosure in recent years. One court of appeals refused to allow the State Office of Risk Management to designate claims files of a settled case as a “pending claim” merely because related cases were still ongoing. Reasoning that the exclusion refers only to those claims that are still subject to judicial scrutiny, the court ordered production of checks and related documents reflecting the settlement to the newspaper and reporter plaintiffs. *Times Picayune Publ’g Corp. v. Bd. of Supervisors*, 845 So. 2d 599 (La. App. 2003), writ denied, 852 So. 2d 1044 (La. 2003); see also *In re Trestman*, 795 So. 2d 398 (La. App. 2001), writ denied, 803 So. 2d 34 (La. 2001) (requiring production of criminal case file to family members after passage of ten years after the crime and finding such an exception to the “pending criminal litigation” exception was not unconstitutional “special legislation”).

In other contexts, however, the courts have been more willing to interpret broadly the statutory exceptions to the Act, including finding 911 tapes protected under the “privileged communications between a health care provider and patient” exception. In that case, the appellate court included the dispatch communications center at issue in the statutory definition of a “health care provider,” reasoning that the term included persons reasonably believed to be such by the patient. *Hill v. East Baton Rouge Parish Dep’t of Emergency Med. Servs.*, No. 2005 1236, 2005 La. App. LEXIS 2611 (La. App. Dec. 22, 2005); but see *Kyle v. Perrilloux*, 868 So. 2d 27 (La. App. 2003) (holding copies of work papers obtained from the legislative auditor and in the physical possession of a district attorney were not technically protected under by the statutory exception for documents “in the custody or control of the legislative auditor”).

Privilege defenses to the Act have similarly been interpreted narrowly in favor of production. Although none of the exceptions under the Act expressly address attorney work product, the Louisiana Supreme Court agreed that Louisiana’s general work product exclusion applies to public records that constitute writings, records, or other accounts reflective of an attorney’s or expert’s mental impressions. Nev-

ertheless, the court held that the audiotapes of witness statements at issue were exempt from disclosure under the Act only to the extent the tapes contained mental impressions, conclusions, opinions or theories of the investigator. *Landis v. Moreau*, 779 So. 2d 691 (La. 2001).

Interpretations of the procedural provisions of the Act may be less of an impediment to enforcement than once thought. One court of appeal previously held that every one of a District Attorney's 82 employees was required to be joined as an indispensable party to a reporter's action to force public disclosure of the employees' leave records. See *Hatfield v. Bush (I)*, 540 So. 2d 1178 (La. App. 1st Cir. 1989). But on rehearing, the court seemed willing to revisit this ruling, and refrained only because it had not been challenged by either party. See *Hatfield v. Bush (II)*, 572 So. 2d 588 (La. App. 1st Cir. 1990); see also *Hilliard v. Litchfield*, 822 So. 2d 743 (La. App. 1st Cir. 2002) (finding prisoner was a "person" entitled to bring claim under Public Records Act because status is measured at the time the request was made, not when suit filed). Additionally, the Second Circuit Court of Appeal expanded its statutory interpretation of inspection rights to permit the use of a hand-held scanner in the clerk's office to copy public documents, reasoning that such devices fall outside the prohibition of "placed or installed" reproduction machines. *First Commerce Title Co. Inc. v. Martin*, 887 So. 2d 716 (La. App. 2d Cir.), writ denied, 896 So. 2d 66 (La. 2005). It should be noted, however, that subsequent to this decision, during the 2005 session, the state legislature amended the language of the statute to prohibit the use of "privately owned copying equipment." La. Rev. Stat. Ann. § 44:32(C)(1)(c). Furthermore, the First Circuit recently issued a troubling decision in *Vourvoulais v. Movassaghi*, 906 So. 2d 561 (La. App. 1st Cir. 2005), in which it held the Act grants a right of action to enforce the right to inspect or copy the public records *only* to the person who actually made the request — in this case, a paralegal in a firm representing a construction company, despite the fact she was acting on the direction of an attorney for the benefit of the client. Because the general counsel of the construction company brought the suit instead of the paralegal who signed the request letter, the court vacated the trial court's judgment in his favor. *Id.* at 465.

Some state appellate courts have arrived at opposite results regarding whether a trial court has the discretion to order the production of public records to an inmate without charge or at a reduced charge, although they were interpreting the same statutory language. *Compare State v. Jean*, 847 So. 2d 780 (La. App. 3rd Cir. 2003) (holding trial court had discretion to order that copies be made at no cost), with *Diggs v. Pennington*, 849 So. 2d 756 (La. App. 4th Cir. 2003) (stating that trial court did not err in finding it lacked the power to compel agency to provide a free report to inmate).

During the 2003 session, the Louisiana Legislature amended the Public Records Act to exclude the central registry of sex offenders maintained by the Louisiana Bureau of Criminal Identification and Information from the disclosure exception given to other documents collected and maintained by the bureau.: La. Rev. Stat. Ann. § 44:3(A)(7).

During the 2003 session, the Louisiana Legislature amended the Public Records Act to add several exceptions related to security: La. Rev. Stat. Ann. § 44:3.1 (exempting material containing security procedures, criminal intelligence information pertaining to terrorist-related activity, threat or vulnerability assessments created, collected or obtained in the prevention of terrorist-related activity); La. Rev. Stat. Ann. § 44:4.1(15.1) (exempting measures to detect and track public health emergencies); La. Rev. Stat. Ann. § 44:4.1(19) (exempting port security and safety plans).

During the 2003 session, the Louisiana Legislature amended the Public Records Act to add several other exceptions: La. Rev. Stat. Ann. § 44:3(G) (exempting disclosures of certificates of official driving records in the custody and control of the Dep't of Public Safety and Corrections, office of motor vehicles, subject to R.S. 15:521); La. Rev. Stat. Ann. § 44:4.1(7) (exempting records of a person's pretrial diversion program following an arrest for DUI-related activities until

the person has successfully completed the intervention program); La. Rev. Stat. Ann. § 44:4.1(8) (exempting records regarding approval of teacher education programs); La. Rev. Stat. Ann. § 44:4.1(27) (Social Security applications and client case folders);

During the 2003 session, the Louisiana Legislature amended the Public Records Act to include several more exceptions related to certain health information: La. Rev. Stat. Ann. § 44:4(36) (documents related to rebates contained in Department of Health and Hospitals and its agents with respect to supplemental rebate negotiations with prescription drug coverage by the Medicaid Program exempted from production); § 44:4(37) (any protected health information as defined in La. R.S. 29:762); § 44:7 (certain hospital records). During the 2005 session, the legislature further amended the Act to provide confidentiality of risk management information in medical malpractice cases. La. Rev. Stat. Ann. § 44:1.1(B)(5).

A statutory exclusion for marketing strategy or strategic plan of a public hospital continues to cut a wide swath across public records (as well as open meetings) disclosure. See La. Rev. Stat. Ann. § 46:1073(C); Op. Att'y Gen. 95-316; Op. Att'y Gen. 95-346. This provision has been a consistent and significant source of press complaints since the last revision of this guidebook.

Open meetings. Louisiana first enacted a rudimentary Open Meeting Law in 1952. The act was flawed in many ways. It had no workable definition of "meeting," lacked procedural and substantive limitations on executive sessions, and failed to provide sanctions for violations. Comment, "Entering the Door Opened: An Evolution of Rights of Public Access to Governmental Deliberation in Louisiana and a Plea for Realistic Remedies," 4 La. L. Rev. 192, 198 n.32 (1980). For example, in 1973, the Louisiana Supreme Court held that the definition of "meeting" in the old law did not include gatherings of public bodies to discuss preliminary or administrative matters if no official action took place. *Reeves v. Orleans Parish Sch. Bd.*, 281 So. 2d 719 (La. 1973).

The Louisiana Constitutional Convention of 1973 considered open meeting issues. The only recorded committee consideration consists of a single memorandum. See Committee on Bill of Rights and Elections, Staff Memo No. 35, Records of the Louisiana Constitutional Convention of 1973: Committee Documents 113. The memorandum stated: "Local and state public bodies in Louisiana have frequently met in executive session to thrash out controversial issues before their open public sessions begin. At the latter session, agreements reached in executive session are publicly approved, often with little debate. The public is thus not involved in the final decision making process . . ." This, apparently, is the typical situation which this proposal seeks to change.

Reflecting these concerns, the new 1974 Louisiana Constitution included the following open meeting provision: "No person shall be denied the right to observe the deliberations of public bodies . . . except in cases established by law." La. Const. art. XII, § 3. Convention delegates approved this provision overwhelmingly, literally without debate. Comment, *supra*, at 197.

In light of the new constitutional language, the Louisiana legislature substantially rewrote the Open Meeting Law in 1976. The 1976 legislation provides much of the basis for current law. Thus, the preamble to the Open Meeting Law was rewritten to express a strong public policy favoring open deliberations:

It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Toward this end, the provisions of (the Open Meeting Law) shall be construed liberally.

La. Rev. Stat. Ann. § 42:4.1. Other 1976 provisions defined "meeting," established exceptions to the open meeting requirement, and provided sanctions for violations of the law.

The Attorney General has stated that the purpose of the Open Meeting Law is to prevent private meetings of public bodies in which only the “end result” is observed by the public in open meetings, with all important discussion and arguments having taken place behind closed doors. 77 Op. Att’y Gen. 1508 (1977). Most of the revisions in the Open Meeting Law since 1976 have clarified and expanded that basic legislative objective. We will briefly outline those changes in this foreword.

The first wave of significant substantive revisions was enacted in 1979. Acts 1979, No. 681, § 1. The 1976 version of the Open Meeting Law did not apply to committee meetings of public bodies. *Phillips v. Board of Supervisors of Louisiana State University*, 391 So. 2d 1217 (La. App. 1st Cir. 1980). In 1979, the definition of “meeting” was expanded to include any committee or subcommittee of a public body. The revision also defined the phrase “public body” to include those groups possessing only advisory powers. Acts 1979, No. 681, § 1; La. Rev. Stat. Ann. § 42:4.2(A).

In a similar vein, the 1976 Open Meeting Law had limited the definition of “meeting” to the “official convening” of a public body. The Attorney General had stated that a meeting was “officially” convened when any prior notification, however informal, was given to members of the public body that a meeting would be held. 76 Op. Atty. Gen. 1399 (1976). In 1979, the Legislature removed the word “official” and thereby mandated that any “convening” of a quorum of a public body would constitute a meeting, except for certain “chance meetings” or “social gatherings” Acts 1979, No. 681, § 1; La. Rev. Stat. Ann. § 42:4.2(A)(l), (B).

The 1979 revisions to the statute also clarified two exceptions to the Open Meeting Law. The amendment added “prospective litigation after formal written demand” to those subjects which could be discussed in a closed meeting (which already included, *e.g.*, collective bargaining and pending litigation). The amendment also provided that the discussion of the appointment of a person to a public body could not be held in a closed meeting. Acts 1979, No. 681, § 1; La. Rev. Stat. Ann. § 42:6.1(A)(1), (2).

The 1979 act substantially revised the enforcement sections of the Open Meeting Law. Prior to 1979, any presiding officer who violated the Open Meeting Law, or any person who conspired with such official to hinder attendance by the public, could be fined or imprisoned. The 1979 amendment removed the criminal penalties, and for the first time specified the civil remedies available to a successful plaintiff, including voidability of any measure enacted at an unlawful closed ses-

sion. A voidability provision had been considered but rejected in 1976. *See Comment, supra*, at 212. The revised enforcement provisions also extended the right to file suit beyond citizens who were denied rights conferred by the Open Meeting Law to any person who has reason to believe that the law was violated.

In 1981, the Louisiana Legislature for the first time made itself subject to the Open Meeting Law. The law generally applies to the Legislature, except that the statute prescribes different requirements for the Legislature with respect to exemptions, public notice, and written minutes.

Generally, the courts of Louisiana have enforced the Open Meeting Law vigorously in keeping with the state constitutional mandate for open government and the preamble of the law. The Louisiana Press Association and its member newspapers monitor the enforcement of the Open Meeting Law to determine the need for periodic legislative refinements or clarification. At the 1988 Regular Legislative Session, for example, LPA successfully advocated the passage of legislation to overrule a Court of Appeal decision which held that a gathering of a public body to hear a presentation by a public official, but not to discuss it, was not a “meeting.” *See* La. Rev. Stat. Ann. § 42:4.2(A)(1) (“meeting” includes convening of quorum by the public body or another public official to receive information), *overruling Common Cause v. Morial*, 506 So. 2d 167 (La. App. 4th Cir. 1987), *writ denied*, 512 So. 2d 458 (La. 1987).

Notwithstanding the strong public policy behind the provisions of the Open Meetings Law, the First Circuit Court of Appeal recently held in that the state constitutional right to observe the deliberations of public bodies and examine public documents under Louisiana Constitution. art. XII, § 3 is not a traditionally “fundamental” and inalienable constitutional right. *St. Mary Anesthesia Assocs. Inc. v. Hosp. Serv. Dist. No. 2 of Parish of St. Mary*, 836 So. 2d 379 (La. App. 1st Cir.), *writ denied*, 840 So. 2d 577 (La. 2003). That case, and the related litigation, *Joseph v. Hosp. Serv. Dist. No. 2 of the Parish of St. Mary*, 805 So. 2d 400 (La. App. 1st Cir.), *writ denied*, 813 So. 2d 1088 (La. 2002), contested the constitutionality of the Enhanced Ability to Compete Act (“EACA”) which created a statutory exclusion for marketing strategy or strategic plan of a public hospital. La. Rev. Stat. Ann. § 46:1070-1076. The appellate court held that the clear language of the constitution stated that the legislature had the authority to establish exceptions to the public’s right to open meetings, and because Section 3 is not a “fundamental, inalienable right, in the sense of those enumerated rights under Article 1,” the EACA exception was not unconstitutionally overbroad.

Open Records

I. STATUTE -- BASIC APPLICATION

A. Who can request records?

1. Status of requestor.

In general, “any person of the age of majority” may request records. La. Rev. Stat. Ann. § 44:31. However, in *Vourvoulais v. Movassaghi*, 906 So. 2d 561 (La. App. 1st Cir. 2005), the court held that the Act grants a right of action to enforce the right to inspect or copy the public records to *only* the person who actually made the request — in that case, a paralegal in a firm representing a construction company, despite the fact she was acting on the direction of an attorney for the benefit of the client. Because the general counsel of the construction company brought the suit instead of the paralegal who signed the request letter, the court vacated the trial court’s judgment in his favor. *Id.* at 465. One exception to this rule is that a convicted felon in custody who has exhausted his or her appellate remedies may not request records unless the request is limited to grounds upon which the individual could file for post-conviction relief. La. Rev. Stat. Ann. § 44:31.1; *see also Hilliard v. Litchfield*, 822 So. 2d 743 (La. App. 1st Cir. 2002) (finding prisoner was a “person” entitled to bring claim under Public Records Act despite having exhausted his appellate remedies when he brought suit, because status is measured at the time the request was made, not when suit filed). Also, public bodies (such as a city council or port district), may not request records, although the individuals who make up a public body may make a request. *Plaquemines Parish Council v. Petrovich*, 629 So. 2d 1322, (La. App. 4th Cir. 1993), *writ denied* 634 So. 2d 390 (La. 1994).

2. Purpose of request.

The requester’s purpose may not affect his right to obtain records, as the custodian of the records “shall make no inquiry of any person who applies for a public record, except an inquiry as to the age and identification of the person.” La. Rev. Stat. Ann. § 44:32; *Bauer v. Maestri*, 676 So. 2d 1096 (La. App. 5th Cir. 1996) (irrelevant that requester previously sought same records through discovery); *Webb v. Shreveport*, 371 So. 2d 316 (La. App. 2nd Cir.), *writ denied*, 374 So. 2d 657 (La. 1979). *See* Op. Att’y Gen. 90-330, rejecting an assessor’s contention that requester’s desire to sell tax rolls for profit affected public record status of rolls. One exception to this rule is that a convicted felon in custody who has exhausted his or her appellate remedies may request only records that are related to post-conviction relief. La. Rev. Stat. Ann. § 44:31.1

3. Use of records.

The law makes no restrictions on subsequent use of information provided. For example, an attorney general opinion clarifies that a public university may not deny access to a weekly newspaper because it was publishing information obtained from the university in a “negative and disparaging manner.” Op. Att’y Gen. 93-482.

B. Whose records are and are not subject to the act?

1. Executive branch.

a. Records of the executives themselves.

Records in the custody or control of the Governor and which are used in the discharge of his duties are exempt. La. Rev. Stat. Ann. § 44:5. This exemption extends to records of the Inspector General’s Office, which is part of the Office of the Governor. Op. Att’y Gen. 92-128. Records of other executives are not exempt.

b. Records of certain but not all functions.

Because most executives are not exempt from the act, records of all functions are subject to the act. For the records of the Governor and the Inspector General, only those records which are used in the discharge of his or her duties are exempt from disclosure.

2. Legislative bodies.

Legislative bodies are covered by the statute. La. Rev. Stat. Ann. § 44.1. *See Times-Picayune v. Johnson*, 645 So. 2d 1174 (La. App. 4th Cir. 1994), *writ denied*, 651 So. 2d 260 (La. 1995) (individual legislators are “custodians” of nomination forms for legislative scholarships to private university). In *Copsey v. Baer*, 593 So. 2d 685 (La. App. 1st Cir. 1991), *writ denied*, 594 So. 2d 876 (La. 1992), however, the court held that the legislative work files related to two bills from prior sessions of the Louisiana legislature were privileged from public records disclosure under the legislative privileges and immunities clause of the Louisiana Constitution, Article III, § 8. The court found that the “demand for legislative files in this case calls for an inquiry into the motivations behind the preparation and introduction of legislative instruments into the Louisiana Legislature. . . .” *Id.* at 689.

3. Courts.

Courts may determine when and under what circumstances sensitive materials should be shielded from disclosure, by finding that parties have the burden of making a specific showing that their privacy interests outweigh the public’s constitutional right of access to the record. *Copeland v. Copeland*, 966 So.2d 1040, 1044-45 (La. 2007). Agencies under the direction of the judiciary are clearly subject to the act. La. Rev. Stat. Ann. § 44:1(A)(1); *Denoux v. Bertel*, 682 So. 2d 300 (La. App. 4th Cir. 1996), *writ denied*, 685 So. 2d 144 (La. 1997) (indigent defender program is public body subject to act); *Cull v. Cardaro*, — So.3d —, 2011 WL 2163969 (La.App. 4th Cir. 6/1/11) (juror venire records of parish’s Jury Commission subject to Public Records Act; *Henderson v. Bigelow*, 982 So.2d 941 (La.App. 4th Cir. 2008) (Court’s Judicial Expense Fund subject to the Act. The Louisiana Supreme Court, however, created a novel exception to the Act by virtue of its “inherent authority,” holding that bar examination model answers, any materials related to the grading guidelines or an applicant’s bar examinations are exempt from disclosure. Acknowledging that none of the exceptions enumerated under the law applied to such records and documents, the Court nevertheless reasoned that it could create an exception by virtue of the “inherent authority” vested in it by the legislature. *Bester v. Louisiana Supreme Court Comm. on Bar Admissions*, 779 So. 2d 715 (La. 2001); *see also Louisiana Supreme Court Comm. on Bar Admissions v. Roberts*, 779 So. 2d 726 (La. 2001) (restating rule set in *Bester*).

4. Nongovernmental bodies.

a. Bodies receiving public funds or benefits.

Nongovernmental bodies receiving public funds are subject to the statute, to the extent that the records pertain to the receipt of public funds. *See* La. Rev. Stat. Ann. § 17:3390 (nonprofit corporations that support public colleges and universities); *Guste v. Nicholls College Foundation*, 564 So. 2d 682 (La. 1990) (records of nonprofit corporation organized to support public university are public to the extent records relate to receipt and expenditure of mandatory student dues paid initially by university to alumni association, but nevertheless constituting public funds); *Lewis v. Spurney*, 456 So. 2d 206 (La. App. 4th Cir. 1984), *writ denied*, 457 So. 2d 1183 (La. 1984), *writ denied*, 458 So. 2d 488 (La. 1984) (financial records of the Louisiana World Exposition, a private nonprofit corporation which created and operated the 1984 World’s Fair, are public records insofar as those records date from the time LWE received state funds); *Carter v. Fench*, 322 So. 2d 305 (La. App. 1st Cir. 1975), *writ denied*, 325 So. 2d 277 (La. 1976) (records of public university student government association budget are public records; once tuition fees are collected by the university these fees become public funds, and those agencies which are the ultimate recipients of such funds are subject to the Public Records Act insofar as their financial records are concerned); *but see* Op. Att’y Gen. 93-214 (other records of student government association generally not subject to Public Records Act); and *Dorson v. State of Louisiana*, 657 So. 2d 755 (La. App. 4th Cir.), *writ denied*, 662 So. 2d 472 (La. 1995) (federally funded and authorized committees within state university system not subject to Public Records Act).

b. Bodies whose members include governmental officials.

Such a group is covered if it receives public funds as its primary source of income, performs a public service, and renders a public function. Op. Att’y Gen. 78-282 (associations of public officials such as the Louisiana School Board Association, the Louisiana Municipal Association, and the Louisiana Police Jury Association are covered by Public Records Act). *See also* Op. Att’y Gen. 93-53 (Personnel board composed of Mayor and Selectmen of parish is subject to Public Records Act). *But see* La. Rev. Stat. Ann. § 17:3390, which, as to public college and university support foundations, would appear to limit disclosure to records of receipt and expenditure of public funds regardless of extent of public funding or public functions performed. The statute provides for the same limited records disclosure even if public university board members and employees serve on the foundation board, as long as they do not constitute a majority of the voting members. *Id.*

5. Multi-state or regional bodies.

Such groups are not specified in the Statute. Louisiana regional planning bodies would be covered, however. *See* Op. Att’y Gen. 92-476 (Lake Pontchartrain Basin Foundation).

6. Advisory boards and commissions, quasi-governmental entities.

Advisory boards, commissions and task forces, and “quasi-public nonprofit corporations designated . . . to perform a governmental or proprietary function” are covered by the statute. La. Rev. Stat. Ann. § 44:1. *See, e.g.,* Op. Att’y Gen. 86-515-A (not-for-profit hospital is designated to perform a governmental or proprietary function and hence is covered); Op. Att’y Gen. 84-66 (parish [county] council on aging, a quasi-public nonprofit corporation created pursuant to state statute, is covered); *But see* La. Rev. Stat. Ann. § 17:3390, *supra* (university foundations); Op. Att’y Gen. 92-404 (parish voluntary councils on aging that receive and expend governmental funds are subject to act “to the extent that they [perform] governmental functions . . . , [receive and disburse] public funds, and/or [use] public facilities and resources,” but not covered as to expenditures of private funds not commingled). *See also* Op. Att’y Gen. 92-476 (Lake Pontchartrain Basin Foundation is covered); Op. Att’y Gen. 92-434 (nonprofit corporation affiliated with state-owned medical facility); Op. Att’y Gen. 84-120 (Convention and Visitors Bureau created by parish [county] governing authority is covered); Op. Att’y Gen. 93-220, and Op. Att’y Gen. 81-1153 (Board of Commissioners of the City Park Improvement Association possesses policy-making, advisory, or administrative functions and hence is covered); Op. Att’y Gen. 93-780 (Records of TMSEL, a private company which operates RTA (itself a public body created by the legislature to operate New Orleans public transit system), are public records to the extent that they concern dealings with the RTA); Op. Att’y Gen. 93-583 (Louisiana Insurance Guaranty Association, a “nonprofit unincorporated legal entity” created to address public insurance concerns, is subject to Public Records Act); Op. Att’y Gen. 94-442 (FloodComm Corp., a “nonprofit public benefit” corporation, created by Orleans Levee district to own, lease, and develop properties, is covered by act); Op. Att’y Gen. 94-259 (members of board of directors of Louisiana Development Partnerships Inc., a nonprofit, government created corporation are subject to act).

7. Others.

The Third Circuit offered an interesting dictum in *Burkett v. UDS Management Corp.*, 741 So. 2d 838 (La. App. 3rd Cir.), *writ denied*, 748 So. 2d 1150 (La. 1999). While the case at bar involved public records in the hands of a contracted private corporation, the court took time to observe “UDS argues that because no Louisiana Court has ever held the records of a private corporation to be subject to public inspection, this court may not now do so. However, we find no statutory or jurisprudential prohibition of such an order, if other factors allowing inspection are present.” In *Burkett*, the court ordered records of a public body Water District in the possession of a private management

company to be produced. *Id.*

In *CII Carbon v. St. Blanc*, 764 So. 2d 1229 (La. App. 1st Cir. 2000), however, the court held that data in the possession of a regulated utility that the Louisiana Public Service Commission had access to but had never had in its possession was not a “public record” under the Act.

C. What records are and are not subject to the act?

1. What kind of records are covered?

The records covered by the act include all 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 which was conducted, transacted, or performed by or under the authority of the constitution or laws of [the] state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of [the] state, are ‘public records’ . . .” La. Rev. Stat. Ann. § 44:1. “The definition is virtually all inclusive. . . . It covers virtually every kind of record and every kind of written, printed or reproduced materials used in the conduct, transaction or performance of any duty or function of a public office. . . .” *Caple v. Brown*, 323 So. 2d 217, 220 (La. App. 2d Cir. 1975); Op. Att’y Gen. 87-301 (computer records of property sales and assessment rolls are covered by the Public Records Act). *But see* the questionable 2-1 decision in *Angelico v. Cannizzaro*, 543 So. 2d 1064 (La. App. 4th Cir. 1989), holding that a special grand jury report critical of the district attorney’s handling of a sales tax irregularity investigation was not a public record.

2. What physical form of records are covered?

The physical forms of records covered include papers as well as photographs, tapes, microfilm, and any other documentary material “regardless of physical form or characteristics, including information contained in electronic data processing equipment. . . .” La. Rev. Stat. Ann. § 44:1; Op. Att’y Gen. 90-330; Op. Att’y Gen. 87-301 (computer records of the assessment rolls are covered by the Public Records Act); Op. Att’y Gen. 98-366 (custodian should attempt to honor all requests to review records stored in electronic imaging format during normal business hours and without charge). One opinion of the Attorney General, however, summarily concludes that a custodian is not obligated to “run any extraordinary errand or report” and is “not required to present the information in a specialized format.” Op. Att’y Gen. 92-367.

3. Are certain records available for inspection but not copying?

All records available for inspection are also available for copies. La. Rev. Stat. Ann. § 44:32(C)(1), (2).

D. Fee provisions or practices.

1. Levels or limitations on fees.

No fee shall be charged to any person to examine or review any public records unless the person requests to view the records outside of regular office hours in which case the person examining the record shall pay reasonable compensation for the custodian. La. Rev. Stat. Ann. § 44:32(A), (C). The custodian should attempt to honor all requests during normal business hours. An order requiring after hour examination is subject to “strict scrutiny” and will be allowed only “when the request is of such a magnitude that it disrupts normal office procedure to the point where the office ceases to operate.” Op. Att’y Gen. 98-366; Op. Att’y Gen. 92-427; Op. Att’y Gen. 81-614.

2. Particular fee specifications or provisions.

a. Search.

Except for searches outside of regular office hours, no fees may be charged to examine or inspect a record. La. Rev. Stat. Ann. § 44:32(C) (3).

b. Duplication.

Except for records of state agencies, fees for copies of records are established by the custodian and must be “reasonable.” Fees for copies of records of state agencies are charged according to the uniform fee schedule adopted by the commissioner of administration unless otherwise fixed by law. La. Rev. Stat. Ann. § 44:32(C).

c. Other.

The fee for an autopsy report is the same as that charged by the registrar of vital records for a death certificate, with the exception that one free copy must be provided to the decedent’s next of kin. La. Rev. Stat. Ann. § 33:1563(J).

3. Provisions for fee waivers.

Copies of records may be furnished without charge or at a reduced charge to indigent persons of the state. Also, copies of state public records may be furnished without charge or at a reduced charge if the custodian determines that the use of such copies will be limited to a public purpose, including but not limited to use in a hearing before any governmental regulatory commission. La. Rev. Stat. Ann. § 44:32(C)(2); *see also* Op. Att’y Gen. 95-102 (custodian of records may use discretion to provide copies free of charge to indigent persons).

Some state appellate courts have arrived at opposite results regarding whether a trial court has the discretion to order the production of public records to an inmate without charge or at a reduced charge, although they were interpreting the same statutory language. *Compare State v. Jean*, 847 So. 2d 780 (La. App. 3rd 2003) (holding trial court had discretion to order that copies be made at no cost), *with Diggs v. Pennington*, 849 So. 2d 756 (La. App. 2003) (stating that trial court did not err in finding it lacked the power to compel agency to provide a free report to inmate).

4. Requirements or prohibitions regarding advance payment.

Advance payment is required only if examination is to be conducted outside of regular office hours and fees include reasonable compensation for the custodian or custodian’s representative. La. Rev. Stat. Ann. § 44:32(A).

5. Have agencies imposed prohibitive fees to discourage requesters?

We are aware of isolated instances in which a custodian demanded seemingly excessive fees, but we do not believe that custodians are using the fee provisions to frustrate the purposes of the act except in isolated cases.

E. Who enforces the act?

The district court for the parish in which the office of the custodian sits. The court has jurisdiction to enjoin the custodian from withholding records or to issue a writ of mandamus ordering the production of any records improperly withheld from the requester. La. Rev. Stat. Ann. § 44:35(B). A requester may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief after being denied the right to inspect or copy records by a final determination in writing by the custodian or the passage of five days from the date of the request, exclusive of Saturdays, Sundays, and legal public holidays. La. Rev. Stat. Ann. § 44:35(A).

1. Attorney General’s role.

No specific provisions.

2. Availability of an ombudsman.

No specific provisions.

3. Commission or agency enforcement.

No specific provisions.

F. Are there sanctions for noncompliance?

Any noncompliance with the order of the court may be punished as contempt of court. La. Rev. Stat. Ann. § 44:35(B).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open records statute.

1. Character of exemptions.

a. General or specific?

Most exemptions are specifically defined. Op. Att’y Gen. 77-1370. The constitutional right of privacy is often invoked to defeat or limit public records requests. *See* La. Const. art. I, § 5; *Traban v. Larrivee*, 365 So. 2d 294 (3rd Cir. 1979); *see also Eastbank Consol. Special Serv. Fire Prot. Dist. v. Crossen*, 892 So. 2d 666 (La. App. 5th Cir.), *writ denied*, 897 So. 2d 608 (La. 2005) (determining that personnel files, including records of all disciplinary actions, reprimands, apologies or other personnel documents should remain beyond the scope of the Public Records Act). Despite the holding in *Capital City Press v. East Baton Rouge Parish Metropolitan Council*, 696 So. 2d 562 (La. 1997) where the Louisiana Supreme Court declined to recognize a privacy exemption from the Act absent clear statutory grounding, more courts have been willing to apply the constitutional right of privacy to limit production of certain requests. *See Angelo Iafrate Constr., L.L.C. v. State*, 879 So. 2d 250 (La. App. 1st Cir. 2004) (finding employees’ expectation of privacy in employee payroll information detailing hourly wages, hours worked, deductions and net paycheck amount outweighed public interest); *Local 100, SEIU v. Smith*, 830 So. 2d 417 (La. App. 2d. Cir.), *writ dismissed*, 836 So. 2d 75 (La. 2003) (disclosure of employees’ organizational affiliations would violate employees’ reasonable expectation of privacy). Nonetheless, the expectation of privacy must be objectively reasonable, and the privacy interest must be balanced against the public’s right to know. *See Hilburn v. State Division of Administration*, 745 So. 2d 1189 (La. App. 1st Cir. 1999) (investigative report concerning one employee’s activities is not exempt); *Times-Picayune v. New Orleans Aviation Board*, 742 So. 2d 979 (La. App. 5th Cir.), *writ denied*, 751 So. 2d 257 (La. 1999) (applications for determining Disadvantaged Business Enterprise are not exempt).

Additionally, the Louisiana Supreme Court created a novel exception to the Act by virtue of its “inherent authority,” holding that bar examination model answers, any materials related to the grading guidelines or an applicants’ bar examinations were also exempt from disclosure. Acknowledging that none of the exceptions enumerated under the law applied to such records and documents, the Court nevertheless reasoned that it could create an exception by virtue of the “inherent authority” vested in it by the legislature. *Bester v. Louisiana Supreme Court Comm. on Bar Admissions*, 779 So. 2d 715 (La. 2001); *see also Louisiana Supreme Court Comm. on Bar Admissions v. Roberts*, 779 So. 2d 726 (La. 2001) (restating rule set in *Bester*).

b. Mandatory or discretionary?

The custodian’s power to enforce most exemptions is discretionary. Some exemptions, especially those found outside the statute itself, are not. *See, e.g.,* La. Rev. Stat. Ann. § 44:3(B) (records pertaining to the identity of any confidential source of information of certain specific state agencies or officers are privileged and no officer or employee may disclose such records except with the written consent of the chief officer of the agency).

c. Patterned after federal Freedom of Information Act?

The Louisiana statutory exemptions are not patterned after the federal statute, although the Attorney General may refer to federal FOIA precedents in his opinions construing the Louisiana act.

2. Discussion of each exemption.

a. Records in use in an investigation by the legislature. La. Rev. Stat. Ann. § 44:2.

b. The following records maintained by prosecutors, and investigative, law enforcement, communication districts (911 agencies), and public health investigators. La. Rev. Stat. Ann. § 44:3(A)(1)-(7).

(1) Records pertaining to pending or reasonably anticipated criminal litigation until such litigation has been finally adjudicated or otherwise settled. La. Rev. Stat. Ann. § 44:3(A)(l). This exception has been construed to prevent disclosure of grand jury records, *Revere v. Reed*, 675 So. 2d 292 (La. App. 1st Cir. 1996); *Hewitt v. Webster*, 118 So. 2d 688 (La. App. 2nd Cir. 1960), *but see* Op. Att’y Gen. 95-137 (addresses of potential and seated grand jurors are public record). The exception also has been used to prohibit disclosure of police and arrest records of the accused during his term in custody, *State v. Walker*, 344 So. 2d 990 (La. 1977), and police department reports, an analysis of objects found at scene of offense, copies of pictures taken of defendants at lineup, and copies of statements allegedly made by witnesses or prospective witnesses which the state intends to use at trial, *State v. Ball*, 328 So. 2d 81 (La. 1976). The determination of whether a specific record pertains to “pending criminal litigation” may be tested in court on a case-by-case basis. The act “requires more than a judicial acceptance of an assertion of privilege by a prosecutor; there must be an opportunity for cross examination and presentation of evidence (at an adversary hearing) to contradict the claim of privilege.” *Cormier v. DiGiulio*, 553 So. 2d 806 (La. 1989), *citing with approval*, *Freeman v. Guaranty Broad. Co.*, 498 So. 2d 218 (La. App. 1st Cir. 1986); *accord*, *Revere v. Layrison*, 593 So. 2d 397, 399 (La. App. 1st Cir. 1991). The Fourth Circuit Court of Appeal has interpreted the statute in such a way that records pertaining to criminal cases would be closed to the public all but indefinitely. In *Bizal v. Connick*, 489 So. 2d 343 (La. App. 4th Cir.), *writ denied*, 491 So. 2d 10 (La. 1986), criminal litigation was held to be “reasonably anticipated” even though conviction had been affirmed by the State Supreme Court two years before. The court stated that there continued to be a reasonable anticipation of further litigation because “convicted defendants often avail themselves of the right to appeal for post-conviction relief (in state and federal criminal justice systems) for seemingly endless periods of time.” The Second Circuit Court of Appeal, however, rejected *Bizal* and held that the availability of post-conviction relief does not constitute “criminal litigation” that is either “pending” or “reasonably anticipated.” *Harrison v. Norris*, 569 So. 2d 585 (La. App. 2d Cir. 1990), *writ denied*, 571 So. 2d 657 (La. 1990). In *Lemmon v. Connick*, 590 So. 2d 574 (La. 1991), the Supreme Court approved *Harrison* and disapproved *Bizal*, over two dissents.

Since *Lemmon*, the First and Fifth Circuit Courts of Appeal have defined “criminal litigation” as “an adversarial contest begun by formal accusation and waged in judicial proceedings in the name of the State, by the district attorney on the one hand, and against the defendant on the other.” *Nix v. Daniel*, 669 So. 2d 573 (La. 1st Cir.), *writ denied*, 681 So. 2d 360 (La. 1996), *citing Voelker v. Miller*, 613 So. 2d 1143 (La. App. 5th Cir. 1993), *citing Harrison*, 569 So. 2d at 589. Similarly, criminal litigation is “pending” only when the formal accusation is instituted by the district attorney or grand jury, *Id.*, and criminal litigation is “reasonably anticipated” only when the district attorney concludes that “it is probable that an arrest will be made and formal accusation will be instituted.” *Id.* Using these definitions, the 5th Circuit has determined that Federal *habeas corpus* proceedings are not criminal litigation under the exception, *Voelker v. Miller*, 613 So. 2d 1143 (La. App. 5th Cir. 1993).

(2) Records which would identify or which would tend to reveal the identity of a confidential source or information. La. Rev. Stat. Ann. § 44:3(A)(2). But the identity of a confidential informant is not privileged when the state police have publicly identified the person. *Freeman v. Guaranty Broad. Corp.*, 498 So. 2d 218 (La. App. 1st Cir. 1986).

(3) Records which contain investigative or security procedures or techniques, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments collected or obtained in the prevention of terrorist-related activ-

ity. La. Rev. Stat. Ann. § 44:3(A)(3). *See* Op. Att’y Gen. 92-552 (§ 44:3(A)(3) exemption refers to investigative procedures and techniques, not to information furnished to ABC unit in license application).

(4) Records of the arrest of a person until the arrested party has been adjudged or pleads guilty. Exceptions: initial investigative reports, booking records, summons or citation records and bill of information records are public records, any information that would reveal undercover or intelligence operations, any information that would reveal identity of a victim of a sexual offense. A 1988 amendment to this section specifies that the initial investigative report must set forth a narrative description of the alleged offense, the name and identification of each person charged with or arrested for the alleged offense, the time and date of the alleged offense, the location of the alleged offense, the property involved, the vehicles involved, and the names of investigating officers. La. Rev. Stat. Ann. § 44:3(A)(4). *Cormier v. DiGiulio*, 553 So. 2d 806 (La. 1989) (initial report of officers “investigating a complaint” not limited to reports on complaints received from the public; covers initial reports on all matters police investigate, even on their own initiative); *State v. McEwen*, 504 So. 2d 817 (La. 1987) (initial report must include all information obtained by officer in the initial investigation of complaint; selective information cannot be placed in the initial report with the remainder placed in a separate and exempt supplemental report); *State v. Shropshire*, 471 So. 2d 707 (La. 1985) (labeling initial investigative report an “incident report” does not exempt it from Public Records Act); *Hilliard v. Litchfield*, 822 So. 2d 743 (La. App. 1st Cir. 2002) (initial report of officers investigating the complaint not a public record); Op. Att’y Gen. 91-390 (public university campus police initial reports covered); *Francois v. Capitol City Press*, 166 So. 2d 84 (La. App. 3rd Cir. 1964) (police log books used to record all activities and events within the jurisdiction, including records of arrests and investigations, are public records). The initial report must be released regardless whether subsequent charges are filed. Op. Att’y Gen. 94-134.

Information that would be exempt, however, under another specific provision of section 3 (e.g., names of confidential informants or undercover officers) or that would reveal *ongoing* undercover or intelligence operations or the identity of the victim of a sexual offense need not be disclosed. La. Rev. Stat. Ann. 44:3(A)(4)(c), (d); *State v. Campbell*, 566 So. 2d 1038 (La. App. 3rd Cir. 1990) (*en banc*). *Note*: Section 9 of the Act, La. Rev. Stat. Ann. § 44:9, provides for the expungement, and in some cases destruction, of records of both misdemeanor and felony arrests if the defendant was acquitted, the charges dismissed or *not pressed*, or prosecution not instituted within the applicable time limitation.

(5) Records which contain the identity of undercover police officers. La. Rev. Stat. Ann. § 44:3(A)(5).

(6) Records which concern status offenders as defined in the Code of Juvenile Procedure. La. Rev. Stat. Ann. § 44:3(A)(6).

(7) Records collected and maintained by the Louisiana Bureau of Criminal Identification and Information. This exception does not apply to the central registry of sex offenders maintained by the bureau. § 44:3(A)(7).

c. Tax returns, except for the name and address of a person who obtains an occupational license, the information on the face of the license, and the name of the person to whom the license is issued. La. Rev. Stat. Ann. § 44:4(l); Op. Att’y Gen. 00-165 (tax returns of public employees or information taken from them are exempt). *See also* Op. Att’y Gen. 96-532 (Dept. of Revenue and Taxation is not prohibited from disclosing names of individuals who have not filed tax returns when requested).

d. Records of persons receiving entitlement payments (old age, blind or dependent children payments). La. Rev. Stat. Ann. § 44:4(2).

e. Records which pertain to a private person or firm which are in their nature confidential “in the custody or control of any officer . . . whose duties . . . are to investigate, examine, manage . . . or liquidate the business of any private person. . . .” La. Rev. Stat. Ann. § 44:4(3). Several opinions of the Attorney General conclude that this exemption includes proprietary and financial information of private persons and companies if confidential in nature, Op. Att’y Gen. 00-36; Op. Att’y Gen. 92-698, Op. Att’y Gen. 89-550, Op. Att’y Gen. 89-598, Op. Att’y Gen. 83-493, and 82-860; and of nonprofit organizations, Op. Att’y Gen. 87-320. Information which would tend to disclose the income of a private individual is also exempt from disclosure. Op. Att’y Gen. 87-355. Thus, the identities of tenants deemed eligible for low income housing also is exempt. Op. Att’y Gen. 97-77. This exemption is said to be grounded in the Louisiana constitutional protection against invasions of privacy. La. Const. Article 1, Section 5. *But see* Op. Att’y Gen. 98-26 (names and salaries of public employees are not exempt, either under act or constitutional right of privacy), Op. Att’y Gen. 92-367, Op. Att’y Gen. 92-715, Op. Att’y Gen. 85-724, and Op. Att’y Gen. 81-353.

f. Various records of financial institutions maintained by the Office of Financial Institutions. La. Rev. Stat. Ann. § 44:4(4).

g. Daily reports and endorsements filed by insurers with the Louisiana Casualty and Surety Rating Commission. La. Rev. Stat. Ann. § 44:4(5).

h. Records in the custody of the Supervisor of Public Funds and working papers of the internal auditor of a municipality, until the audit is complete. La. Rev. Stat. Ann. § 44:4(6).

i. Records in the custody of the Louisiana State Board of Medical Examiners which concern a person’s fitness to practice medicine or midwifery. La. Rev. Stat. Ann. § 44:4(7).

j. Records in the custody of the Department of Conservation which concern proven or estimated reserves of petroleum, natural gas or other minerals. This exemption applies only when the record has “been declared, presented or received as confidential at the request of the lawful owner thereof. . . .” La. Rev. Stat. Ann. § 44:4(8).

k. Records in the custody of the Louisiana State board of Nursing, Louisiana State Board of Dentistry, and Louisiana Board of Veterinary Medicine relating to a person’s fitness to hold a license to practice nursing, dentistry, or veterinary medicine, excluding any action taken by those Boards, and any legal grounds upon which such action is based, relative to an individual’s fitness to receive or to continue to hold a license. La. Rev. Stat. Ann. § 44:4(9), (11) and (12).

l. Records in the control or custody of the Governor and which are used in the discharge of his duties. La. Rev. Stat. Ann. § 44:5.

m. Hospital records of individual patients and the records and proceedings of hospital committees. La. Rev. Stat. Ann. § 44:7. Op. Att’y Gen. 92-600. Generally, however, documentation submitted by a health care provider is subject to disclosure. Op. Att’y Gen. 92-367.

n. Records received by the Department of Natural Resources where nondisclosure is required by federal law. La. Rev. Stat. Ann. § 44:4(10).

o. Computer programs or financial or proprietary information used with any automated broker interface system or an automated manifest system conducted by any port commission. La. Rev. Stat. Ann. § 44:4(13).

p. Records in the custody of the Department of Health and Human Resources containing trade secrets submitted by the manufacturer of a product. La. Rev. Stat. Ann. § 44:4(14).

q. Home address and telephone numbers of public employees when the employee requests that they be confidential (La. Rev. Stat. Ann. § 44:11; Op. Att’y Gen. 00-165 and 95-243), and medical and insurance records of public employees (La. Rev. Stat. Ann. § 44:12). Employee performance evaluations are exempt. Op. Att’y Gen. 85-724; *Traban*

v. Larrivee, 365 So. 2d 294 (La. App. 3rd Cir. 1978), *writ denied*, 366 So. 2d 564 (La. 1979). *But see* Op. Att’y Gen. 98-26, Op. Att’y Gen. 92-367, Op. Att’y Gen. 92-715, Op. Att’y Gen. 81-353, and Op. Att’y Gen. 85-724 (names and salaries of public employees are not exempt, either under act or constitutional right of privacy). Information concerning marital status and organizational memberships of public appointees is exempt, but education and employment histories are not exempt. Op. Att’y Gen. 83-648. Transcripts, medical records, letters of recommendation and other “personally identifiable documents” of personnel are exempt. Op. Att’y Gen. 79-242.

r. Personally identifiable student records are exempt (e.g., grades, test scores, birth dates), but statistics and reports that do not identify an individual are public records. Op. Att’y Gen. 76-186; *LaPlante v. Steward*, 470 So. 2d 1018 (La. App. 1st Cir.), *writ denied*, 476 So. 2d 352 (La. 1985). *But see* La. Rev. Stat. Ann. § 17:391.4(E) (pupil assessment test scores of individual students, classes, schools and school systems are exempt from the Public Records Act but may be released by school boards if they do not identify individual students, classes, and teachers).

s. Working papers and interim reports developed in conjunction with a strategic plan prepared by private consulting firms and possessed by the Board of Commissioners of the Port of New Orleans that contain sensitive commercial data, the disclosure of which would diminish the competitive advantage of the Port of New Orleans, are not public records. Information that is confidential and proprietary in nature may be excised from the public records. Op. Att’y Gen. 86-669.

t. Upon the request of the owner, certain electronic logs and other electronic surveys produced from wells drilled in search of oil and gas which are filed with the assistant secretary of the Office of Conservation. La. Rev. Stat. Ann. § 44:1(B)

u. All documents filed with, and evidence and proceedings before the judicial commission. La. Rev. Stat. Ann. § 44:10.

v. Records of any library indicating which of its materials have been loaned to or used by an identifiable individual or group of individuals and records of any library which are maintained for purposes of registration or for determining eligibility for the use of library services. La. Rev. Stat. Ann. § 44:13. Op. Att’y Gen. 98-496 (records concerning complaints about Internet usage, specifically about patrons accessing pornographic or sexually explicit material, are public records but the identity of the user of the material must be redacted from the record before release).

w. Identifiable information on their insureds provided by law to the state Department of Health and Hospitals by those issuing health insurance. La. Rev. Stat. Ann. § 44:14.

x. Claim files relating to pending claims in the custody of the Office of Risk Management, Division of Administration, or similar records of a municipality or parish. La. Rev. Stat. Ann. § 44:4(15). *See* Op. Att’y Gen. 91-98, which expresses the opinion that section 44:4(15) must be construed *in pari materia* with a wide range of other laws, including the work product privilege and the purported privacy rights of health care providers, and suggests that closed medical malpractice claim files are subject to item-by-item review and non-disclosure.

y. Records of boards and institutions of higher learning involving trade secrets and commercial or financial information obtained from a person and “pertaining to research or to the commercialization of technology”; proposals and commercial or technical research by faculty “of a patentable or licensable nature”; private document collections designated by their donors as having restricted access for a specific period of time. La. Rev. Stat. Ann. § 44:4(16). One Attorney General’s opinion expresses the surprising conclusion that “*any information which pertains to research* is deemed to be ‘commercial’ under section 4(16) (a) and thus is exempt until published.” Op. Att’y Gen. 92-94 would extend a blanket exemption to any information obtained by a public university research center collecting “demographic information” and doing “political polling.”

z. Records required of hospitals by the Department of Health and Hospitals as a condition of licensure. La. Rev. Stat. Ann. § 44:4(17).

aa. Records of Board of Chiropractic Examiners concerning fitness of licensees. La. Rev. Stat. Ann. § 44:4(18).

bb. Records of Office of Public Health gathered or prepared in connection with studies and investigations to determine any “cause or condition of health.” Statistics relating to morbidity and mortality may be released if they do not identify individual cases and sources of information or religious affiliations. La. Rev. Stat. Ann. § 44:4(19) (replaces or broadens former 44:3A(7), repealed in 1990).

cc. Records of Department of Wildlife and Fisheries on “rare, threatened, or endangered species or unique natural communities.” La. Rev. Stat. Ann. § 44:4(20).

dd. Questionnaire information concerning the timber industry received by the Department of Agriculture and Forestry. Compiled results, however, are public records. La. Rev. Stat. Ann. § 44:4(21).

ee. Medical and vital records relating to maternal and infant mortality studies of the Commission on Perinatal Care and Prevention of Infant Mortality of the Department of Health and Hospitals. La. Rev. Stat. Ann. § 44:4(22); § 40:2018(I).

ff. Name and address of a law enforcement officer in the custody of the registrar of voters or the commissioner of elections, if the law enforcement officer’s employer agency certifies that the officer is engaging in “hazardous activities” that make it necessary for his or her name and address to be kept confidential. La. Rev. Stat. Ann. § 44:4(23).

gg. Motor vehicle accident reports required to be submitted to the State by the driver of vehicles involved in an accident involving death, injury or more than \$100 property damage. Reports are available, however, to parties to accident, insurers, attorneys, and “news-gathering organizations.” La. Rev. Stat. Ann. § 44:4(24); 32:398(H). This exception was challenged on First Amendment and equal protection grounds, but was held to be constitutional. *DeSalvo v. Louisiana*, 624 So. 2d 897 (La. 1993), *cert. denied*, 510 U.S. 1117 (1994).

hh. Records of the retired members of the state and municipal employees retirement systems except for the amount of the retired member’s retirement allowance, final average compensation, years of creditable service, and the names of the agencies with which he was employed and dates employed. La. Rev. Stat. Ann. § 44:16. This information may be requested by a member of the legislature or an individual reporting to the public retirement system or group receiving benefits from the retirement system. La. Rev. Stat. Ann. 44:16(B); Op. Att’y Gen. 95-243A.

ii. Information and records pertaining to the immunization status of persons against childhood diseases, unless the information is disclosed only for the purpose of administering or receiving vaccinations, and the information is released to one of the following individuals: (1) state health care provider; (2) private health care provider; (3) representative of a patient; or (4) a patient who is not a minor. La. Rev. Stat. Ann. § 44:17(B)-(C).

jj. Certificates of official driving records in the custody and control of the Department of Public Safety and Corrections, office of motor vehicles, except as provided in R.S. 15:521. La. Rev. Stat. Ann. § 44:3(G).

B. Other statutory exclusions.

Records are “public records” except as otherwise provided in the Public Records Act “or as otherwise specifically provided by law.” La. Rev. Stat. Ann. § 44:1(A)(2). Such exclusions include:

1. *Marketing plan for hospital service district commission*: Any marketing strategy and strategic plan of a hospital service district commission and the facility owned or operated by the district is exempt from Public Records Act. *See, e.g.*, La. Rev. Stat. Ann. § 46:1073(C). Op. Att’y Gen. 95-316.

2. *Records of University Foundations*: Public access to records of university foundations is limited. *See* La. Rev. Stat. Ann. § 17:3390.

3. *Gaming*: Public access to records of Louisiana Economic Development and Gaming Corporation is limited. *See* La. Rev. Stat. Ann. § 27:237.

4. *Obligation Bonds*: The records of ownership, registration, transfer, and exchange of state general obligation bonds are exempt from Public Records Act. La. Rev. Stat. Ann. § 39:1435(C).

5. *Proprietary School Commission*: Documents containing information provided with an application for a proprietary school license to the Louisiana Proprietary School Commission are not open to public inspection. La. Rev. Stat. Ann. § 17:3141.4.

6. *Pardon and Parole Records*: The pre-sentence investigation report, the pre-parole report, the clemency report, the information and data gathered by the staffs of the boards of pardon and parole, the prison records, and any other information obtained by the boards or the Department of Safety and Corrections, Office of Corrections Services, in the discharge of their official duties shall be confidential and shall not be subject to public inspection, except for certain limited information which is public if an inmate applies for pardon or parole. La. Rev. Stat. Ann. § 15:574.12

7. *Securities Issued by a Public Entity*: The records of ownership, registration, transfer and exchange of securities issued by a public entity and of persons to whom payment with respect to such securities are made are exempt from the Public Records Act. La. Rev. Stat. Ann. § 39:1435

8. *Contractors with Department of Highways*: Information furnished by proposed contractors with the Department of Highways that indicates the financial and other capacities of the contractor to perform the proposed work is exempt from the Public Records Act. La. Rev. Stat. Ann. § 48:255.1

9. *Sex Offenders*: The dissemination of information relating to convicted sex offenders may not be released except according to regulations established by the Parole Board pursuant to La. Rev. Stat. Ann. § 15:547(C).

10. *Internal Affairs Investigations*: In connection with an investigation of a law enforcement officer, a law enforcement agency is prohibited from releasing an officer’s home address, photograph, or other information determined to be confidential by the law enforcement agency. La. Rev. Stat. Ann. § 40:2532; Op. Att’y Gen. 93-333.

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

1. *Constitutional Invasion of Privacy*: Certain records may be exempt from the Public Records Act because the nature of the information is so personal that disclosure of the records would constitute an invasion of privacy in violation of article I, section 5 of the Louisiana Constitution of 1974. The leading case supporting this analysis is *Traban v. Larrivee*, 365 So. 2d 294 (3rd Cir. 1979) (Performance evaluation reports of public employees are exempt. The confidentiality of these evaluations serves the public interest because it promotes candidness, objectivity and accuracy. Thus, the public’s “right to know” embodied in article XII, section 3 of the Louisiana Constitution of 1974 does not outweigh the privacy interests involved.). Courts generally were reluctant to identify privacy rights absent clear statutory grounding, particularly after the Louisiana Supreme Court decision in *Capital City Press v. East Baton Rouge Parish Metropolitan Council*, 696 So. 2d 562 (La. 1997) (finding no reasonable expectation of privacy for those applying for public employment).

Historically, opinions using this analysis conclude either that there is no expectation of privacy in the requested information, or that the public’s right to know outweighs the privacy interest involved. *See Hilbun v. State Division of Administration*, 745 So. 2d 1189 (La. App. 1st Cir. 1999) (public employee has no expectation of privacy in inter-

views given in a state Division of Administration investigative report); *Times-Picayune v. New Orleans Aviation Board*, 742 So. 2d 979 (La. App. 5th Cir.), writ denied, 751 So. 2d 257 (La. 1999) (forms submitted in application for Disadvantaged Business Enterprise status are not exempt from disclosure); *Local 100 v. Rose*, 675 So. 2d 11 (La. App. 1st Cir. 1996), writ denied 679 So. 2d 441 (La. 1996) (public employee has no expectation of privacy in name, or home or work addresses, although he or she may request that his or her home address and telephone number remain confidential, pursuant to La. Rev. Stat. Ann. § 44:11(A)(2)-(3)); *Treadway v. Jones*, 583 So. 2d 119 (La. App. 4th Cir. 1991) (court must determine if assertion of privacy interests is “objectively reasonable” in light of public activity involved; corporations have no predictable privacy interests); *Hatfield v. Bush (II)*, 572 So. 2d 588 (La. App. 1st Cir. 1990), writ denied, 576 So. 2d 49 (1991) (district attorney’s employees have no reasonable expectation of privacy with respect to their names, dates of absence, and reasons for absence, with possible exception of certain types of sick leave and reasons therefor); *Gannett River States Pub. Co. v. Hussey*, 557 So. 2d 1154 (La. App. 2d Cir. 1990), writ denied, 561 So. 2d 103 (La. 1990) (applicants for fire chief of Shreveport had no objectively reasonable expectation of privacy in applications); *Plaquemines Parish Commission Council v. Delta Development Company Inc.*, 472 So. 2d 560 (La. 1985) (public officials have a diminished right to privacy by virtue of their undertaking public office, especially concerning information that had to do with their conduct in the administration of their office and with revenues derived therefrom. But even the privacy concerns of private individuals may be overridden by the legitimate needs of the public to know. A court must attempt to balance the competing interests of the right of the public to access to information and the right of individuals to privacy. Thus, information relating to money received by public officials and their immediate families from mineral interests on public lands is ordered to be disclosed.); Op. Att’y Gen. 95-294 (information contained in an outstanding warrant is public record, and is not outweighed by privacy interests); Op. Att’y Gen. 94-87 (names and addresses of applicants for physical therapist assistant licensure who sat for testing have no expectation of privacy in their names or addresses); Op. Att’y Gen. 89-560 (disclosure of Department of Environmental Quality publication’s mailing list of subscribers does not violate privacy rights of subscribers).

However in recent years, several Court of Appeal decisions and opinions of the Attorney General have used this privacy analysis to justify denying access to records: *Eastbank Consol. Special Serv. Fire Prot. Dist. v. Crossen*, 892 So. 2d 666 (La. App. 5th Cir.), writ denied, 897 So. 2d 608 (La. 2005) (determining that personnel files, including records of all disciplinary actions, reprimands, apologies or other personnel documents should remain beyond the scope of the Public Records Act); *Angelo Iafrate Constr., L.L.C. v. State*, 879 So. 2d 250 (La. App. 1st Cir. 2004) (finding employees’ expectation of privacy in employee payroll information detailing hourly wages, hours worked, deductions and net paycheck amount outweighs public interest); *Local 100, SEIU v. Smith*, 830 So. 2d 417 (La. App. 2d Cir.), writ dismissed, 836 So. 2d 75 (La. 2003) (disclosure of employees’ organizational affiliations violated employees’ reasonable expectation of privacy); *Broderrick v. State, Department of Environmental Quality*, 761 So. 2d 713 (La. App. 1st Cir.), writ denied, 768 So. 2d 1284 (La. 2000) (privacy interests in employee grievance records outweighs public interest in disclosure); *Ellerbe v. Andrews*, 623 So. 2d 41 (La. App. 1st Cir. 1993) (privacy interests prevent disclosure in a civil case of a party’s “rap sheet” from the State’s centralized computer base); Op. Att’y Gen. 98-21 (records of incomplete investigation of sexual harassment allegation); Op. Att’y Gen. 93-445A (information regarding employees’ tax exemptions, taxable wages, federal tax, FICA wages, Medicare wages, Medicare tax, state tax, and deferred compensation protected by privacy interests); Op. Att’y Gen. 00-165 (same); Op. Att’y Gen. 87-355 (information tending to disclose the income of a private individual is exempt); Op. Att’y Gen. 76-186 (personally identifiable student records are exempt).

Additionally, the Louisiana Supreme Court created a novel ex-

ception to the Act by virtue of its “inherent authority,” holding that bar examination model answers, any materials related to the grading guidelines or an applicants’ bar examinations were also exempt from disclosure. Acknowledging that none of the exceptions enumerated under the law applied to such records and documents, the Court nevertheless reasoned that it could create an exception by virtue of the “inherent authority” vested in it by the legislature. *Bester v. Louisiana Supreme Court Comm. on Bar Admissions*, 779 So. 2d 715 (La. 2001); see also *Louisiana Supreme Court Comm. on Bar Admissions v. Roberts*, 779 So. 2d 726 (La. 2001) (restating rule set in *Bester*).

Note: In a dubious related ruling which was not reviewed by the Louisiana Supreme Court, the *Hatfield* court required the plaintiff reporter to join each of the District Attorney’s 82 employees as an indispensable party to the reporter’s action for mandamus to secure access under the Act to the employees’ leave records. See *Hatfield v. Bush (I)*, 540 So. 2d 1178 (La. App. 1st Cir. 1989). On remand, plaintiff joined only five employees and his relief was limited to the records of the five. On rehearing, the Court of Appeal concluded that its indispensable party ruling in *Hatfield I* was *res judicata* because it had not been appealed. See *Hatfield (II)*, 572 So. 2d at 594-95.

D. Are segregable portions of records containing exempt material available?

Yes. La. Rev. Stat. Ann. § 44:32(B); 33(A)(l); *Association for Rights of Citizens of St. Bernard*, 557 So. 2d 714, 716-17 (La. App. 4th Cir. 1990).

E. Homeland Security Measures.

During the 2003 session, the Louisiana Legislature amended the Public Records Act to add several exceptions related to security: La. Rev. Stat. Ann. § 44:3.1 (exempting material containing security procedures, criminal intelligence information pertaining to terrorist-related activity, threat or vulnerability assessments created, collected or obtained in the prevention of terrorist-related activity); La. Rev. Stat. Ann. § 44:4.1(15.1) (exempting measures to detect and track public health emergencies); La. Rev. Stat. Ann. § 44:4.1(19) (exempting port security and safety plans).

III. STATE LAW ON ELECTRONIC RECORDS

“Information contained in electronic data processing equipment” is specifically included in the definition of “public records.” La. Rev. Stat. Ann. § 44:1(A)(2). Electronic information therefore is subject to the general provisions of the Public Records Act. See Ops. Att’y Gen. 98-366 (records stored via electronic imaging system); 90-576 (computer records of 911 calls subject to Public Records Act), 90-576 (computer information generated by office of assessor is subject to Public Records Act), 90-398 (computer information regarding student records subject to Public Records Act). However, privacy issues may be raised. See Ops. Att’y Gen. 01-155 (monitoring and electronic recording of board members’ private computer equipment under a public records request would violate individual members’ right to privacy).

A. Can the requester choose a format for receiving records?

No specific provision. The requestor can choose to receive electronic records in electronic format. *St. Tammany Parish Coroner v. Doe*, 48 So.3d 1241 (La.App. 1st Cir. 2010); *Johnson v. City of Pineville*, 9 So.3d 313 (La.App. 3d Cir. 2009).

B. Can the requester obtain a customized search of computer databases to fit particular needs?

No specific provision. For public records generally, however, the requester need only describe records sought with enough specificity that custodian may identify and locate records. Op. Att’y Gen. 89-602A. Thus, if a requester reasonably describes information that the custodian can locate through a search of a database, the request should be granted. Arguably, customized requests are analogous to “creating” a document not already in existence. See, e.g., *Nungesser v. Brown*,

667 So. 2d 1036 (La. 1996) (reversing Court of Appeal decision that required Commissioner of Insurance to provide a list of certain investments requested by plaintiff, where list did not exist in the form specified by the plaintiff). In the context of electronic databases, however, the *Nungesser* analysis would largely negate the Act's specific coverage of "information contained in electronic data processing equipment" and would be contrary to the general rule requiring that the Public Records Act be construed so as to favor disclosure. *Title Research Corp. v. Rausch*, 450 So. 2d 933, 936 (La. 1984).

C. Does the existence of information in electronic format affect its openness?

According to the language of La. Rev. Stat. Ann. § 44:1, records otherwise within definition are public records "regardless of physical form or characteristics, including information contained in electronic data processing equipment." Apart from possible misapplication of the rationale that a custodian need not "create" a document, see *Nungesser v. Brown, supra*, the existence of information in electronic format should not affect its openness.

D. How is e-mail treated?

No specific provisions, but under the Act, governmental e-mail should be treated as a public record and should be produced to a requester absent an applicable exemption.

1. Does e-mail constitute a record?

No specific provision, but the statutory definition of "public record" includes all "records . . . regardless of physical form or characteristics." La. Rev. Stat. Ann. § 44:1.

2. Public matter on government e-mail or government hardware

No specific provision, but the Act applies to "public records" without regard to where the records are found.

3. Private matter on government e-mail or government hardware

No specific provision. The Act defines "public records," as 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 which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state."

4. Public matter on private e-mail

No specific provision. The Act defines "public records," as 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 which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state, so public matters on private e-mail should be subject to Act.

5. Private matter on private e-mail

No specific provision, but the Act applies only to "public records," so private matter on private e-mail should not be covered.

E. How are text messages and instant messages treated?

No specific provisions, but under the Act, governmental text messages or instant messages should be treated as a public record and should be produced to a requester absent an applicable exemption.

1. Do text messages and/or instant messages constitute a record?

No specific provision, but the statutory definition of "public record" includes all "records . . . regardless of physical form or characteristics." La. Rev. Stat. Ann. § 44:1.

2. Public matter message on government hardware.

No specific provision, but the Act applies to "public records" without regard to where the records are found.

3. Private matter message on government hardware.

No specific provision. The Act defines "public records," as 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 which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state."

4. Public matter message on private hardware.

No specific provision. The Act defines "public records," as 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 which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state, so public matters on private hardware should be subject to Act.

5. Private matter message on private hardware.

No specific provision, but the Act applies only to "public records," so private matter on private hardware should not be covered.

F. How are social media postings and messages treated?

No specific provision, but under the Act, social media postings and messages should be treated as a public record and should be produced to a requester absent an applicable exemption, if they otherwise fall within the definition of "public record."

G. How are online discussion board posts treated?

No specific provision, but under the Act, online discussion board posts should be treated as a public record and should be produced to a requester absent an applicable exemption, if they otherwise fall within the definition of "public record."

H. Computer software

No specific provision, but under the Act, computer software should be treated as a public record and should be produced to a requester absent an applicable exemption, if it otherwise falls within the definition of "public record." However, "any documentary material of a security feature of a public body's electronic data processing system, information technology system, telecommunications network, or electronic security system, including hardware or software security, password, or security procedure, process, configuration, software, and code is not a 'public record'" La. Rev. Stat. Ann. § 44:1(A)(2)(b).

1. Is software public?

No specific provision.

2. Is software and/or file metadata public?

No specific provision, but under the Act, software and/or file metadata should be treated as a public record and should be produced to a

requester absent an applicable exemption, if they otherwise fall within the definition of “public record.”

I. How are fees for electronic records assessed?

There is no specific provision for the records of most public bodies. Except for the records of state agencies, the fees are established by the custodian and must be “reasonable.” Fees for copies of records of state agencies are charged according to a uniform fee schedule adopted by the commissioner of administration unless otherwise fixed by law. La. Rev. Stat. Ann. § 44:32(C). That fee schedule provides that “charges for copies of public records on preprinted computer reports shall be at the same rate [as non-computer records]. Each agency shall develop a uniform fee schedule for providing printouts of public records stored in a computer data base utilizing routine utility programs An estimated cost shall be given for request for reproduction of public records stored in a computer which require program modification or specialized programs. The requesting party shall be advised of the estimate . . . but the actual cost for reproduction, including programming costs, shall be charged if it differs from the estimate.” LAC 4:301. *But see St. Tammany Parish Coroner v. Doe*, 48 So.3d 1241 (La.App. 1st Cir. 2010) (requestor not charged for “apparently negligible” cost of electronic format on which requested data would be down-loaded).

J. Money-making schemes.

No specific provision.

1. Revenues.

No specific provision.

2. Geographic Information Systems.

No specific provision.

K. On-line dissemination.

No specific provision.

IV. RECORD CATEGORIES -- OPEN OR CLOSED

A. Autopsy reports.

As amended in 1999, La. Rev. Stat. Ann. § 33:1563(J) specifically identifies autopsy reports as public records, and further provides that “[t]he public records fee for . . . an autopsy report shall be the same as that charged by the registrar of vital records for the state for a death certificate.” *See also Everett v. Southern Transplant Service Inc.*, 709 So. 2d 764 (La. 1998) (reversing a Fourth Circuit decision holding that coroners’ reports were not public records under the previous statute). The Louisiana Legislature, however, has now amended the Act to state that autopsy photos, video and visual images are not considered public records. La. Rev. Stat. Ann. § 44:4.1(26). The Attorney General previously rendered an opinion that the autopsy record of a child is not public record if the child is under seven, or the child’s death is connected with a criminal investigation. Op. Att’y Gen. 94-19. But the First Circuit has since ruled that autopsy reports of children under seven years are not exempt from disclosure unless the child died an “unexpected death” as defined by La. Rev. Stat. Ann. § 40:2019(B)(3): “a death which is a result of undiagnosed disease, or trauma in which the surrounding circumstances are suspicious, obscure, or otherwise unexplained,” or SIDS. *Bozeman v. Mack*, 744 So. 2d 34 (La. App. 1st Cir. 1998) (holding that the autopsy report of a minor killed in a car accident was a public record because the circumstances of her death were not suspicious, obscure, or otherwise unexplained). The 1999 statute, R.S. 33:1563(J), makes no exception for young children.

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

No specific provision, but these records should be treated as a public record and should be produced to a requester absent an applicable exemption, if they otherwise fall within the definition of “public record.” The Act contains numerous exemptions for these types of records,

typically phrased as exempting “records . . . concerning the fitness of any person to receive, or continue to hold, a license to practice”, e.g., medicine, nursing, dentistry, veterinary medicine, etc. La. Rev. Stat. Ann § 44:4, subsections 7, 9, 11 and 12.

2. Rules for closed investigations.

Typically, the “final determination” of fitness to hold licenses to practice these occupations is a public record.

C. Bank records.

Bank examination records are exempt. La. Rev. Stat. Ann. § 44:4(4). *See also Op. Att’y Gen. Jan. 31, 1974.* So are bank shareholder records. Op. Att’y Gen. Nov. 5, 1965.

D. Budgets.

Budgets are covered by the Act. *Carter v. Fench*, 322 So.2d 305 (La. App. 1st Cir. 1975).

E. Business records, financial data, trade secrets.

Business or financial records of a quasi-public corporation receiving public funds are public records from the time the public funds are received, *Lewis v. Spurney*, 456 So. 2d 206 (La. App. 4th Cir.), *writ denied*, 457 So. 2d 1183 (La. 1984), *writ denied*, 458 So. 2d 488 (La. 1984). But proprietary or trade secret information provided to public bodies by the developer, owner, or manufacturer of a code, pattern, formula, design, device, method or process in order to obtain approval for sale or use in the state is specifically exempted from the Public Records Act. La. Rev. Stat. Ann. § 44:3.2. Business records and financial records provided to state agencies as a consequence of regulatory laws may be protected by the constitutional right of privacy or pursuant to section 4(3). La. Rev. Stat. Ann. § 44:4(3). *See Op. Att’y Gen. 95-254A* (it is an open question best left to courts whether constitutional right of privacy applies to third-party financial information notwithstanding Public Records Act). Several opinions of the Attorney General conclude that this exemption extends to proprietary and financial information of nonprofit organizations, private persons, and companies if the information is confidential in nature. Op. Att’y Gen. 00-36 (confidential business information provided to La. State Dept. of Agriculture and Forestry by regulated entities); Op. Att’y Gen. 94-508 (personally identifiable financial information contained within public utility records should not be released to protect privacy of individual customers); Op. Att’y Gen. 92-698; Op. Att’y Gen. 89-550; Op. Att’y Gen. 89-598; Op. Att’y Gen. 87-320; Op. Att’y Gen. 83-493; and Op. Att’y Gen. 82-860. *But see Times-Picayune Publishing Corp. v. New Orleans Aviation Board*, 742 So. 2d 979 (La. App. 5th Cir.), *writ denied*, 751 So. 2d 257 (La. 1999) (applicants for Disadvantaged Business Enterprise eligibility have no expectation of privacy regarding certain general financial information submitted in applications but more specific information marked “confidential” is except from disclosure).

There is also a narrow statutory exclusion for financial or trade secrets relating to automated broker interface systems or automated manifest systems conducted by deep water or shallow draft port commission of the State. La. Rev. Stat. Ann. § 44:4(13)(b); Op. Att’y Gen. 95-254(A).

F. Contracts, proposals and bids.

Open except to the extent that they contain otherwise non-public information. *See Op. Att’y Gen. 95-7* (management contract entered into by and between hospital and a hospital management firm is subject to Public Records Act, except for portions which would reveal the marketing strategy or strategic plan of the hospital, as prohibited by La. Rev. Stat. Ann. § 46:1073); *See also Ops. Att’y Gen. 92-698, 89-550, 89-598 and 83-493* (all indicating that proprietary and financial information of private persons and companies is exempt from disclosure). Note, however, that the Office of the Attorney General stated in 1995 that it is still an open question best left to courts whether constitutional right of privacy applies to third-party financial information notwithstanding Public Records Act. Op. Att’y Gen. 95-254A.

G. Collective bargaining records.

Statute does not specify.

H. Coroners reports.

Coroners reports are public record even in cases involving commission of a crime. *State v. Arnold*, 466 So. 2d 520 (La. App. 3rd Cir. 1985), *writ denied*, 470 So. 2d 124 (La. 1985); *State v. Williams*, 438 So. 2d 1212 (La. App. 3rd Cir. 1983), *writ denied*, 443 So. 2d 590 (La. 1983); Op. Att’y Gen. 89604. The Louisiana Supreme Court has reversed a Fourth Circuit decision which had held that coroner’s reports were not public records. *Everett v. Southern Transplant Service Inc.*, 709 So. 2d 764 (La. 1998). The records do not become public, however, until after the notification of the next of kin and upon final autopsy and investigation. See La. Rev. Stat. Ann. § 33:1563(K)(2)-(3); see also Op. Att’y Gen. 94-271.

I. Economic development records.

The Act contains a limited exemption for certain “records in the custody of the Department of Economic Development pertaining to an active negotiation with a person for the purpose of retaining, expanding, or attracting economic or business development in the state” if the person requests confidentiality and details the reasons, and the secretary of the Department of Economic Development agrees. The exemption ends “immediately upon the conclusion of the negotiation”; the exemption can last no longer than 24 months. The exemption ceases to exist “beginning with any negotiations that begin on or after July 1, 2012.” La. Rev. Stat. Ann. § 44:22.

J. Election records.

1. Voter registration records.

Voter registration records are subject to the Act, except for “the name and address of a law enforcement officer in the custody of the registrar of voters or the secretary of state, if certified by the law enforcement agency employing the officer that the officer is engaging in hazardous activities to the extent that it is necessary for his name and address to be kept confidential.” La. Rev. Stat. Ann. § 44:4(23).

2. Voting results.

Voting results are subject to the Act. Much information is available without the need for a public records request, as the website of the Louisiana Secretary of State, <http://sos.louisiana.gov/tabid/68/Default.aspx>.

L. Hospital reports.

Exempt to the extent they contain personally identifiable information or reflect the records or proceedings of hospital committees. La. Rev. Stat. Ann. § 44:7. Administrative and financial records are not exempt. Op. Att’y Gen. 86-515-A.

M. Personnel records.

1. Salary.

Information concerning gross income is subject to discovery, as is information regarding expenses incurred by an employee and amounts reimbursed for those expenses. Op. Att’y Gen. 93-445(A). The Attorney General has issued an opinion, however, indicating that constitutional privacy interests prevent disclosure of information regarding tax exemptions, taxable wages, federal tax, FICA wages, FICA tax, Medicare wages, Medicare tax, state tax, and deferred compensation. *Id.* The First Circuit held that employees had an expectation of privacy in their payroll information that detailed hourly wages, hours worked, deductions and net paycheck amount. *Angelo Iafrat Constr., L.L.C. v. State*, 879 So. 2d 250 (La. App. 1st Cir. 2004); Op. Att’y Gen. 01-0226 (names and gross salaries of municipal employees are generally subject to release as public records).

2. Disciplinary records.

Employee performance evaluations are exempt. Op. Att’y Gen. 85-724; *Traban v. Larrivee*, 365 So. 2d 294 (La. App. 3rd Cir. 1978)

(citing constitutional privacy right), *writ denied*, 366 So. 2d 564 (La. 1979). Disciplinary hearing records involving employee misconduct, however, do not give rise to a reasonable expectation of privacy. *Amoco Production Co. v. Landry*, 426 So. 2d 220 (La. App. 4th Cir. 1982), *writ denied*, 433 So. 2d 164 (La. 1983); Op. Att’y Gen. 99-382 (school board member’s access to employee’s file to review disciplinary action against him). Nor do interviews given in the context of an investigation by the state Division of Administration. *Hilburn v. State Division of Administration*, 745 So. 2d 1189 (La. App. 1st Cir. 1999).

3. Applications.

The Supreme Court has ruled that applicants for public employment have no objectively reasonable expectation of privacy in their applications. *Capital City Press v. East Baton Rouge Parish Metropolitan Council*, 696 So. 2d 562 (La. 1997). See also *Gannett River States Publishing v. Hussey*, 557 So. 2d 1154 (La. App. 2d Cir.), *writ denied*, 561 So. 2d 103 (La. 1990) (although applicants for position of Chief of City Fire Department have an expectation of privacy in their names, the public’s “right to know” outweighs that expectation and requires disclosure of the applications). Applicants for Disadvantaged Business Enterprise status have no reasonable expectation of privacy for the forms filed pursuant to their application, but supplemental answers and material attached on separate sheets marked “Confidential” and attached tax returns are exempt and should be redacted prior to disclosure. *Times-Picayune Publishing Corp. v. New Orleans Aviation Board*, 745 So. 2d 1189 (La. App. 1st Cir.), *writ denied*, 751 So. 2d 257 (La. 1999). Education and employment history information are a matter of public record, but information concerning marital status and organizational memberships are exempt. Op. Att’y Gen. 83-648. Transcripts, medical records, and letters of recommendation are exempt. Op. Att’y Gen. 79-242.

4. Personally identifying information.

Such records should be treated as a public record and should be produced to a requester absent an applicable exemption, if they otherwise fall within the definition of “public record.” The Act contains numerous exemptions for these types of records, such as for the home addresses and telephone numbers of public employees and their bank account information, social security numbers of public employees, medical records of current or former public employees, etc. La. Rev. Stat. Ann. § 44:4(11)(A), (11)(C), (12) and (15).

5. Expense reports.

No specific provision, but under the Act, expense reports should be treated as a public record and should be produced to a requester absent an applicable exemption.

6. Other.

Any Social Security numbers, direct deposit information, medical and insurance related documentation contained in personnel records are exempt. La. Rev. Stat. Ann. § 44:11.

Employee leave records, with possible exception of certain types of sick leave and reasons therefor, are public and not protected by privacy right. *Hatfield v. Busb (II)*, 572 So. 2d 588 (La. App. 1st Cir. 1990), *writ denied*, 576 So. 2d 49 (La. 1991). There is also no expectation of privacy in an employees’ identity, home address or work address. Op. Att’y Gen. 98-26; *Local 100 v. Rose*, 675 So. 2d 1153 (La. App. 1st Cir. 1996) (note, however, that an employee may specifically request that his or her address remain private. La. Rev. Stat. Ann. § 44:11). Business telephone records reflecting calls made by public employees are public records and disclosure does not violate employees’ privacy rights. Op. Att’y Gen. 90-159. Per diem payment and travel expense records are public. Op. Att’y Gen. 89-471; Op. Att’y Gen. 91-295. The Attorney General has expressed the opinion that “personally identifiable” personnel records are public records “only if the information is deemed relevant to the functioning of the public body.” Op. Att’y Gen. 90-364 and 79-242. It is unclear which records this elastic standard would protect, but Op. Att’y Gen. 79-242 suggests that a school teacher’s

employment application, transcript of grades, letters of recommendation, performance evaluation, medical records, and complaints about the teacher's conduct would be protected. *See* Op. Att'y Gen. 99-382 (School Board members can access an employee's personnel file to see if any disciplinary action has been taken against an employee, but cannot access school employee records relative to evaluations, observations, formal complaints, and grievances). Timesheets are a matter of public record. Op. Att'y Gen. 01-117.

N. Police records.

1. Accident reports.

Available to parties to accidents, insurers, attorneys, and "news-gathering organizations." La. Rev. Stat. Ann. § 44:4(24); § 32:398(H), (K)

2. Police blotter.

Every law enforcement officer making an arrest must promptly book the individual arrested by entering certain specified information into a book kept for that purpose. La. Code Crim. P. Art. 228. The book and booking information summaries shall always be open for public inspection. *Id.*; La. Rev. Stat. Ann. § 44:3(A)(4); Op. Att'y Gen. 78-1159. The information contained in an outstanding warrant is public record, and is not outweighed by privacy interests. Op. Att'y Gen. 95-294. Privacy interests do, however, prevent disclosure in a civil case of a party's "rap sheets" from the State's centralized computer-base. *Ellerbe v. Andrews*, 623 So. 2d 41 (La. App. 1st Cir. 1993).

3. 911 tapes.

Despite their historical treatment as public records (Ops. Att'y Gen. 97-233, 96-89, 93-152, 92-209, 90-576), the state First Circuit recently held that 911 tapes are protected under the "privileged communications between a health care provider and patient" exception in the Public Records Act. *Hill v. East Baton Rouge Parish Dep't of Emergency Med. Servs.*, No. 2005 1236, 2005 La. App. LEXIS 2611 (La. App. 1st Cir. Dec. 22, 2005) (citing La. R.S. § 44:4.1(B)(5)). In that case, the appellate court found that the dispatch communications center that received the 911 call was included in the statutory definition of a "health care provider." It reasoned that the term included persons "reasonably believed to be such by the patient."

4. Investigatory records.

a. Rules for active investigations.

Records of active investigations are exempt, except for the initial police report. La. Rev. Stat. Ann. § 44:3(A)(l), (4). In addition, the home address and photograph of a law enforcement officer under investigation, as well as any other information deemed confidential by the law enforcement agency, may not be disclosed. La. Rev. Stat. Ann. § 40:2532; Op. Att'y Gen. 93-323.

b. Rules for closed investigations.

Records of closed investigations are public records only after pending or reasonably anticipated litigation is finally adjudicated or settled. La. Rev. Stat. Ann. § 44:3(A)(l). *In re Matter Under Investigation*, 15 So.2d 972, 992 (La. 2009) (determination of whether criminal litigation is "reasonably anticipated" must be made on case-by-case basis in contradictory hearing with opportunity to present evidence and examine witnesses). Internal Affairs investigative records may be expunged upon request of the officer if the officer is exonerated or the agency finds that the complaint is unfounded or unsustainable. Op. Att'y Gen. 94-216

5. Arrest records.

Exempt until the arrested party has been adjudged or pleads guilty. La. Rev. Stat. Ann. § 44:3. Op. Att'y Gen. 97-417 (report of deputy sheriff regarding emergency medical service performed in connection with an arrest is exempt). But booking records, police log books of arrest, and initial investigative reports are public records, except for

information that would reveal ongoing undercover or intelligence operations or the identity of a sexual offense victim, or that would otherwise be exempt under another specific provision of section 3 (e.g., names of confidential informants or undercover officers). La. Rev. Stat. Ann. § 44:3; *State v. Campbell*, 566 So. 2d 1038 (La. App. 3rd Cir. 1990) (*en banc*). *See also* Section 9 of the Act, La. Rev. Stat. Ann. § 44:9, which provides for the expungement and, in some cases, destruction of certain arrest records.

6. Compilations of criminal histories.

Public information, if they do not pertain to a pending or reasonably anticipated criminal prosecution. *See* Op. Att'y Gen. 77-1370 and *State v. Sanders*, 357 So. 2d 1089 (La. 1978). *But see Ellerbe v. Andrews*, 623 So. 2d 41 (La. App. 1st Cir. 1993) (constitutional privacy interests prevent disclosure in a civil suit of a party's "rap sheet" from the State's centralized computer system).

7. Victims.

The act does not require that victims be identified in the initial investigation report. Nor does it prohibit disclosure in that report of the identity of victims except for victims of sexual crimes. La. Rev. Stat. Ann. § 44:3(A)(4)(b). Records and reports concerning all matters and proceedings before a juvenile court are confidential and docketing of juvenile cases are kept separately from the civil and criminal cases. La. Rev. Stat. Ann. § 44:4.1(B)(35); Op. Att'y Gen. 03-0026.

In 2000, the Legislature amended La. Rev. Stat. Ann. § 44.4 to exempt from public records disclosure requirements "the name of any person, contained within or referred to in the records, papers or files of the Crime Victims Reparations Board, applying for or receiving funds from the Crime Victims Reparations Fund. In lieu of the person's name, the person's file number shall be used." Act 58, 2000 La. Sess. Law Serv. No. 2 80 (West).

8. Confessions.

Exempt during pendency of criminal litigation. La. Rev. Stat. Ann. § 44:3(A)(l).

9. Confidential informants.

Exempt. La. Rev. Stat. Ann. § 44:3(A)(2). *State of Louisiana v. Ramsey*, 60 So.3d 36, 41 (La.App. 5th Cir. 2011) (any record that would tend to reveal the identity of confidential informant is exempt from the Act).

10. Police techniques.

Exempt. La. Rev. Stat. Ann. § 44:3(A)(3). But a general assertion that certain documents reveal investigative techniques is insufficient to justify the privilege. The law enforcement agency must produce evidence to substantiate the claim of privilege and the party seeking discovery of the records must be afforded meaningful cross-examination to allow the discovering party to contradict the assertion of the privilege. *Freeman v. Guaranty Broad. Corp.*, 498 So. 2d 218 (La. App. 1st Cir. 1986).

11. Mug shots.

Photographs of convicted sex offenders are not available without special authorization from the Parole Board. La. Rev. Stat. Ann. § 15:546(A), 15:547(C); Op. Att'y Gen. 94-338. One opinion of the Attorney General further suggests that mugshots in general are also not available for inmates or ex-offenders without special authorization from the Department of Corrections. Op. Att'y Gen. 94-338.

12. Sex offender records.

No specific provision, but under the Act, sex offender records should be treated as a public record and should be produced to a requester absent an applicable exemption.

13. Emergency medical services records.

With one judge dissenting, one Court of Appeal has held that tapes of calls to 911 requesting emergency medical assistance were exempt as being "privileged communications between a health care provider

and a patient.” *Hill v. East Baton Rouge Parish Dept. of Emergency*, 925 So.2d 17 (La.App. 1st Cir. 2005), *writ denied*, 927 So.2d 311 (La. 2006).

O. Prison, parole and probation reports.

Pre-parole reports, clemency reports, and the information gathered by the pardons and parole boards staffs are exempt. La. Rev. Stat. Ann. § 15:574.12(A). Records of pretrial intervention program are exempt until charges are dropped, then covered unless expunged. Op. Att’y Gen. 90-588.

P. Public utility records.

Municipal utility billing records are public records and disclosure does not infringe customers’ privacy rights. Op. Att’y Gen. 90-549. However, any personally identifiable financial information contained within those records should not be released, in order to protect the privacy interests of individual customers. Op. Att’y Gen. 94-508. Social Security numbers and private telephone numbers also are exempt from disclosure. Op. Att’y Gen. 00-314.

Records pertaining to a public water works held by a contracted private corporation which managed utility’s accounting and billing are public records and must be made available. See *Burkett v. UDS Management Corp.*, 741 So. 2d 838 (La. App. 3rd Cir.), *writ denied*, 748 So. 2d 1150 (La. 1999).

Documents in the possession of a regulated utility that the Louisiana Public Service Commission has access to but never had in its possession are not public records under the Act. *CII Carbon v. St. Blanc*, 764 So. 2d 1229 (La. App. 1st Cir. 2000).

Q. Real estate appraisals, negotiations.

1. Appraisals.

No specific provision, but appraisals should be treated as a public record and should be produced to a requester absent an applicable exemption, if they otherwise fall within the definition of “public record.”

2. Negotiations.

No specific provision, but real estate negotiations should be treated as a public record and should be produced to a requester absent an applicable exemption, if they otherwise fall within the definition of “public record.”

3. Transactions.

No specific provision, but real estate transactions should be treated as a public record and should be produced to a requester absent an applicable exemption, if they otherwise fall within the definition of “public record.”

4. Deeds, liens, foreclosures, title history.

No specific provision, but real estate deeds, liens, foreclosures, title history should be treated as a public record and should be produced to a requester absent an applicable exemption, if they otherwise fall within the definition of “public record.”

5. Zoning records.

No specific provision, but zoning records should be treated as a public record and should be produced to a requester absent an applicable exemption, if they otherwise fall within the definition of “public record.”

R. School and university records.

1. Athletic records.

Presumptively open except to the extent the records contain personally identifiable information. Op. Att’y Gen. 76-186.

2. Trustee records.

Open. Op. Att’y Gen. 78-1158 and 87-406.

3. Student records.

Presumptively open except to the extent the records contain personally identifiable information. Op. Att’y Gen. 93-285; Op. Att’y Gen. 76-186. The names and addresses of students enrolled in public schools and universities are open. Op. Att’y Gen. 93-228; Op. Att’y Gen. 91-73. Privacy issues may be raised, however. See Op. Att’y Gen. 02-0040 (the release of student records could violate the student’s right to privacy).

Videotape made by school district of students on school bus, “prepared for use by the [public] . . . school system during the course of its duty to provide transportation to its students,” was a public record, despite the fact that it contained personally identifiable student information (to wit, images of the students). Students have no reasonable expectation of privacy on a school bus, particularly one equipped with a video camera, so no balancing test is needed to determine that records are subject to disclosure. *State v. Mart*, 697 So. 2d 1055 (La. App. 1st Cir. 1997).

4. Other.

Student loan applications are exempt. Op. Att’y Gen. Feb. 11, 1974. Forms or letters submitting nominations by State legislators for scholarships to a university are public records. *Times-Picayune v. Johnson*, 645 So. 2d 1174 (La. App. 4th Cir. 1994), *writ denied*, 650 So. 2d 260 (La. 1995); Op. Att’y Gen. 93-419.

The First Circuit has ruled that the federal Buckley Amendment, 20 U.S.C. § 1232g, does not create any privacy interest in individual students. *State v. Mart*, 697 So. 2d 1055 (La. App. 1st Cir. 1997).

In 2000, the Legislature amended La. Rev. Stat. Ann. § 44.4 to exempt from public records disclosure requirements testing instruments used by the Department of Education or the Board of Elementary and Secondary Education, the answers to those tests, and any individual student scores on those tests. Those authorized by policies of the Department or the Board may access this information in the exercise of their duties and responsibilities. The parent or guardian of any child may access that child’s individual test scores. Act 48, 2000 La. Sess. Law Serv. No. 2 72 (West).

S. Vital statistics.

The state registrar is the custodian of vital statistics, but he or she may delegate his or her functions and duties to employees of the registry. La. Rev. Stat. Ann. § 40:40(A), (E). In general, records are only available for inspection by, or issuance of a copy to, the person named in the records, their immediate or surviving family, the beneficiary of an insurance policy or trust, or attorneys acting on behalf of these, as per La. Rev. Stat. Ann. § 40:41(C)(1)-(2). Marriage records, however, are not subject to subsection (C), see § 40:41(C)(3), and so presumably are public records normally disclosable, § 40:41(A).

Information may also be disclosed to other state’s vital statistics agencies and federal agencies responsible for vital statistics as necessary for statistical and administrative purposes, provided arrangements are made for the retention and disposal of the records. La. Rev. Stat. Ann. § 40:41(F), (G).

Vital statistics information received from other states is to be handled in the same manner as Louisiana records under this section. La. Rev. Stat. Ann. § 40:41(G).

Military Discharge. Any discharge certificate or other evidence of honorable separation from the armed forces of the United States filed on or after July 1, 2000 is not considered a public record. La. Rev. Stat. Ann. § 44:20.

1. Birth certificates.

“Disclosure of confidential birth information from which legitimacy or illegitimacy of birth of any child can be ascertained may be made only upon order of the court in any case where that information is necessary for the determination of personal or property rights and

then only for that purpose,” except for sheriffs or district attorneys, who may obtain such information on written request to the state registrar. La. Rev. Stat. Ann. § 40:41(B).

Birth certificates otherwise are only available to the person named in the certificate, their immediate or surviving family, the beneficiary of an insurance policy or trust, or an attorney acting on behalf of any of these. La. Rev. Stat. Ann. § 40:41(C)(1)–(2).

However, researchers under the supervision of the State Health Officer may conduct approved research in the records, so long as rules and procedures are followed which will guarantee the confidentiality of the information in the records. La. Rev. Stat. Ann. § 40:41(D).

Access to sealed adoption records requires a court order, the issuance of which is governed by Children’s Code Articles 1188–1192. La. Rev. Stat. Ann. § 40:79. Such an order may only be obtained by an adopted child, or if still a minor, his or her legal representative. La. Ch. Code art. 1188. It may only be issued on a showing of “compelling necessity” based on inheritance rights, medical necessity, the registration of a biological parent or sibling according to Chapter 15 of the Children’s Code (arts. 1271–1272), or other requirement of state or federal law. La. Ch. Code art. 1189. A curator may be appointed by the court to review the record to determine whether it need be unsealed. La. Ch. Code arts. 1190–1191. The disclosed record should contain as little identifying information about the biological family as possible. La. Ch. Code art. 1192. (Note that adult children and biological parents who register with the Office of Community Service can be matched, notified, and given information necessary to contact one another without opening the records, and thus without a court order. La. Ch. Code arts. 1271–1272).

2. Marriage & divorce.

Marriage records are not subject to subsection (C) (see § 40:41(C)(3)) and so presumably are public records normally disclosable. La. Rev. Stat. Ann. § 40:41(A).

3. Death certificates.

Up to one year following the date of death, a death certificate may be issued to a funeral director at the request of the immediate family. La. Rev. Stat. Ann. § 40:41(C)(5). Otherwise it is only available to the immediate or surviving family of the person named in the certificate, or an attorney acting on their behalf. La. Rev. Stat. Ann. § 40:41(C)(1), (2).

4. Infectious disease and health epidemics.

“All records of interviews, questionnaires, reports, statements, notes, and memoranda procured by and prepared by employees or agents of the office of public health . . . in connection with special morbidity and mortality studies and research investigations to determine any cause or condition of health, . . . are confidential and shall be used solely for statistical, scientific, and medical research purposes relating to the cause or condition of health. . . .” La. Rev. Stat. Ann. 40:3.1(A).

V. PROCEDURE FOR OBTAINING RECORDS

A. How to start.

1. Who receives a request?

The “custodian” of public records is “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.” La. Rev. Stat. Ann. § 44:1(A)(3) (emphasis added). A person is the “custodian” of a public record if he or she has “control” over the records at issue; physical possession is not prerequisite. *Times-Picayune Publishing Corp. v. Johnson*, 645 So. 2d 1174 (La. App. 4th Cir. 1994), *writ denied* 651 So. 2d 260 (La. 1995) (Louisiana legislators who had “control” of scholarship nomination firms in the physical custody of private university are custodians of the records for purpose of Public Records Act). *See also Burkett v. UDS Management Corp.*, 741 So. 2d 838 (La. App. 3rd Cir.), *writ denied*,

748 So. 2d 1150 (La. 1999) (water district public records possessed by private management company must be disclosed).

2. Does the law cover oral requests?

Yes. Request need only be specific enough to allow custodian to identify and locate records. Op. Att’y Gen. 89–602A.

a. Arrangements to inspect & copy.

The requester need not make arrangements beforehand to inspect and copy records. “If the public record applied for is immediately available, because of its not being in active use at the time of the application, the public record shall be immediately presented to the authorized person applying for it.” La. Rev. Stat. Ann. § 44:33(B)(l). *See also* Op. Att’y Gen. 00–241 (copies made of public records need not be returned).

b. If an oral request is denied:

(1). How does the requester memorialize the refusal?

The custodian of the record shall notify *in writing* the person making the request of the custodian’s determination and the reasons for it. La. Rev. Stat. Ann. § 44:32(D).

(2). Do subsequent steps need to be in writing?

There are no subsequent steps other than legal action.

3. Contents of a written request.

Not specified by statute.

a. Description of the records.

Request need only be specific enough to allow custodian to identify and locate records. Op. Att’y Gen. 89–602A. Courts have, however, refused to impose a duty on public bodies to “create” documents not already in existence. *See, e.g., Nungesser v. Brown*, 667 So. 2d 1036 (La. 1996) (reversing Court of Appeal decision requiring Commissioner of Insurance to provide data requested by plaintiff, where data did not exist in the form specified by the plaintiff).

b. Need to address fee issues.

Copies of records may be furnished without charge or at a reduced charge to indigent persons of the state. Also, copies of state public records may be furnished without charge or at a reduced charge if the custodian determines that the use of such copies will be limited to a public purpose, including but not limited to use in a hearing before any governmental regulatory commission. La. Rev. Stat. Ann. § 44:32(C)(2); *see also* Op. Att’y Gen. 95–102 (custodian of records may use discretion to provide copies free of charge to indigent persons).

Advance payment is required only if examination is to be conducted outside of regular office hours and fees include reasonable compensation for the custodian or custodian’s representative. La. Rev. Stat. Ann. § 44:32(A).

c. Plea for quick response.

The request need not specify a quick response, but it is often useful to quote the statute’s requirement that records not in use be made available “immediately.” La. Rev. Stat. Ann. § 44:33(B)(1).

d. Can the request be for future records?

This issue is not addressed in the statute.

B. How long to wait.

1. Statutory, regulatory or court-set time limits for agency response.

Within three days, exclusive of Saturdays, Sundays, and legal public holidays. La. Rev. Stat. Ann. § 44:32(D). Custodian must respond

within three days even if still in the process of determining which requested records may be withheld. *Association of Rights of Citizens v. St. Bernard*, 557 So. 2d 714, 716-17 (La. App. 4th Cir. 1990).

2. Informal telephone inquiry as to status.

There is no provision or limitation in statute for an informal telephone inquiry as to status.

3. Is delay recognized as a denial for appeal purposes?

Delay is recognized as a denial for appeal purposes. A requester may institute proceedings five days from the date of the request, exclusive of Saturdays, Sundays, and legal public holidays. La. Rev. Stat. Ann. § 44:35(A).

4. Any other recourse to encourage a response.

Any person having custody or control of a public record who violates the Public Records Act is subject to criminal penalties. La. Rev. Stat. Ann. § 44:37. Arbitrary failure to respond may trigger \$100 per day civil penalty against custodian. La. Rev. Stat. Ann. § 44:35(E).

C. Administrative appeal.

Not available.

2. To whom is an appeal directed?

4. Contents of appeal letter.

D. Court action.

1. Who may sue?

“Any person who has been denied the right to inspect or copy a record. . . .” La. Rev. Stat. Ann. § 44:35A.

2. Priority.

Public records suits “shall be tried by preference and in a summary manner. Any appellate courts to which the suit is brought shall place it on its preferential docket and shall hear it without delay, rendering a decision as soon as practicable.” La. Rev. Stat. Ann. § 44:35(C).

3. Pro se.

As with any lawsuit, it is possible, but probably not advisable, to proceed *pro se*. Louisiana courts are unaccustomed to litigation conducted by *pro se* plaintiffs. The litigant’s lack of familiarity with court rules and procedures may increase the risk of waiving or failing to assert properly the right of access to public records.

4. Issues the court will address:

a. Denial.

Yes. La. Rev. Stat. Ann. § 44:35(A).

b. Fees for records.

Yes. La. Rev. Stat. Ann. § 44:32(C).

c. Delays.

Yes. La. Rev. Stat. Ann. § 44:35(E).

d. Patterns for future access (declaratory judgment).

Yes. La. Rev. Stat. Ann. § 44:35(A).

5. Pleading format.

Not specified. Cases usually are brought as requests for a writ of mandamus directed to the custodian of the requested records.

6. Time limit for filing suit.

Not specified. According to one Court of Appeal decision, a plaintiff

may be subject to a laches defense if he or she delays filing suit beyond the time the custodian is obligated to maintain the requested records, even if the plaintiff requested the records while they were required to be, and apparently were, maintained. *Benoit v. DeVillier*, 649 So. 2d 523 (La. App. 3d Cir. 1994), *writ denied*, 650 So. 2d 243 (La. 1995).

7. What court.

The district court for the parish [county] in which the office of the custodian is located. La. Rev. Stat. Ann. § 44:35A.

8. Judicial remedies available.

Writ of mandamus, injunctive or declaratory relief, together with attorneys’ fees, costs, damages, and civil penalties, if available. La. Rev. Stat. Ann. § 44:35(A).

9. Litigation expenses.

Available. “If a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he shall be awarded reasonable attorneys’ fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him reasonable attorneys’ fees or an appropriate portion thereof.” La. Rev. Stat. Ann. § 44:35(D). Louisiana courts interpreting section 35(D) have measured “prevailing” by the plaintiff-requester’s success in obtaining the records sued for. *See, e.g., Ferguson v. Stephens*, 623 So. 2d 711 (La. App. 4th Cir. 1993) (court ordinarily should not consider custodian’s good faith in determining whether to award attorneys fees); *Association for Rights of Citizens v. St. Bernard*, 557 So. 2d 714 (La. App. 4th Cir. 1990) (fee award mandatory if plaintiff “fully successful in obtaining all the information requested”); *Treadway v. Jones*, 583 So. 2d 119 (La. App. 4th Cir. 1991) (housing authority compelled to produce requested records liable for requester’s attorneys’ fees despite its good faith refusal based on advice of counsel); *Gannett River States Pub. Co. v. Hussey*, 557 So. 2d 1154, 1159-60 (La. App. 2d Cir. 1990), *writ denied*, 561 So. 2d 103 (La. 1990) (custodian’s good faith relevant to denial of attorneys’ fees but some records successfully withheld); *Lewis v. Spurney*, 456 So. 2d 206, 208 (La. App. 4th Cir. 1984), *writ denied*, 457 So. 2d 1183 and 458 So. 2d 488 (La. 1984) (same reasoning as *Gannett*). *See also Tectrans, Inc. v. New Orleans Aviation Board*, 695 F.Supp.2d 313 (E.D. La. 2010) (requestor entitled to attorneys’ fees where Defendant failed to retain requested public records for statutory three-year period). “[I]n the event the custodian retains private legal counsel for his defense or for bringing suit against the requester in connection with the request for records, the court may award attorneys’ fees to the custodian.” La. Rev. Stat. Ann. § 44:35(E). In the complex Tulane legislative scholarship litigation, the Fourth Circuit denied attorneys’ fees to the Times-Picayune despite generally affirming the district court’s ruling on the merits of the records dispute. *Times-Picayune Publishing Corp. v. Johnson*, 645 So. 2d 1174 (La. App. 4th Cir. 1994), *writ denied*, 651 So. 2d 259 (La. 1995) (plaintiff was entitled to records at issue, but that plaintiff’s request for mandamus was “premature” in absence of showing that defendants would not comply with declaratory judgment, and plaintiff was not entitled to award of attorneys’ fees). The Fourth Circuit has since provided direction to avoid the problem in *Johnson* by instructing that a party may simply ask for a writ of mandamus independently of any declaratory judgment, and issues that need to be determined (such as whether or not the records are public, and whether or not the party opposing the writ is the proper custodian) can be settled in a contradictory mandamus hearing. *See Alliance for Affordable Energy v. Frick*, 695 So. 2d 1126 (La. App. 4th Cir. 1997). The amount of attorneys’ fees awarded will not be disturbed absent “clear evidence of abuse of discretion.” *Times-Picayune Publishing Corp. v. New Orleans Aviation Board*, 742 So. 2d 979 (La. App. 5th Cir.), *writ denied*, 751 So. 2d 257 (La. 1999).

a. Attorney fees.

Available. “If a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he shall be awarded reasonable attorneys’ fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him reasonable

attorneys' fees or an appropriate portion thereof." La. Rev. Stat. Ann. § 44:35(D).

b. Court and litigation costs.

Available. "If a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he shall be awarded reasonable attorneys' fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him reasonable attorneys' fees or an appropriate portion thereof." La. Rev. Stat. Ann. § 44:35(D).

10. Fines.

A person convicted of violating the Public Records Act shall be fined not less than \$100 nor more than \$1,000 or imprisoned not less than one month nor more than six months upon first conviction and shall be fined not less than \$250 nor more than \$2,000 or imprisoned not less than two months nor more than six months, or both, upon subsequent convictions. La. Rev. Stat. Ann. § 44:37.

11. Other penalties.

"If the court finds that the custodian arbitrarily or capriciously withheld the requested record or unreasonably or arbitrarily failed to respond to the request as required by R.S. 44:32 . . . it may award the requester any actual damages proven by him to have resulted from the actions of the custodian In addition, if the court finds that the custodian unreasonably or arbitrarily failed to respond to the request as required . . . it may award civil penalties not to exceed \$100 per day, exclusive of Saturdays, Sundays, and legal public holidays, for each such day of failure to give notification. The custodian shall be personally liable for the payment of any such damages, and shall be liable *in solido* with the public body for the payment of the requester's attorneys' fees and other costs of litigation, except where the custodian has withheld or denied production of the requested record or records on advice of the legal counsel representing the public body in which the office of such custodian is located. . . ." La. Rev. Stat. Ann. § 44:35(E); *Twardzik v. Orleans Parish Sch. Bld.*, 876 So. 2d 855 (La. App. 4th Cir. 2004) (no evidence custodian acted arbitrarily or capriciously in handling request for records); *Ott v. Clarkson*, 863 So. 2d 663 (La. App. 4th Cir. 2003) (the fact that appellant was able to obtain relevant

documents from a different source that were not found in custodian's records does not necessarily indicate that the custodian acted surreptitiously or unreasonably); *Johnson v. City of Pineville*, 9 So.3d 313 (La. App. 3d Cir. 2009) (awarding civil penalty of \$50 per day for arbitrary and capricious failure to produce arrest records). Turning the intent of this provision on its head, one Court of Appeal has held repeatedly that these penalties are not applicable if there is no question that the records requested are public records. *Washington v. Reed*, 668 So. 2d 1313 (La. App. 1st Cir. 1996); *Elliot v. District Atty of Baton Rouge*, 664 So. 2d 122 (La. App. 1st Cir. 1995), *writ denied* 664 So. 2d 440 (La. 1995); *Foster v. Kemp*, 657 So. 2d 681 (La. App. 1995) (all reasoning that the notification requirement referred to in LSA-R.S. 44:35(E)(1) only applies when a question is raised by the custodian as to whether the requested documents are public records).

12. Settlement, pros and cons.

Not addressed.

E. Appealing initial court decisions.

1. Appeal routes.

The appeal route is to the state intermediate appellate court for the circuit where the district court is located, then, upon application for writ of certiorari, to the Louisiana Supreme Court.

2. Time limits for filing appeals.

60 days.

3. Contact of interested amici.

Contact the Louisiana Press Association, 404 Europe St., Baton Rouge, Louisiana 70802; telephone number; (225) 344-9309; attention: Pamela Mitchell-Wagner, Executive Director.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

F. Addressing government suits against disclosure.

There is no apparent case law on this topic.

Open Meetings

I. STATUTE -- BASIC APPLICATION.

A. Who may attend?

Meetings of a public body required to be open shall be open to “the public.” La. Rev. Stat. Ann. § 42:14(A).

B. What governments are subject to the law?

1. State.

State boards, commissions, and authorities, as well as any political subdivisions thereof, are subject to the law. La. Rev. Stat. Ann. § 42:13.2.

2. County.

Parish governing authorities, school boards and boards of levee and port commissioners, and any other parish boards, commissions or authorities, as well as any political subdivisions thereof, are subject to the law. La. Rev. Stat. Ann. § 42:13.2.

3. Local or municipal.

Village, town and city governing authorities; planning, zoning and airport commissions; and any other municipal or special district boards, commissions or authorities, as well as any political subdivisions thereof, are subject to the law. La. Rev. Stat. Ann. § 42:13.2.

C. What bodies are covered by the law?

1. Executive branch agencies.

a. What officials are covered?

State and local executive branch officials are not covered. La. Rev. Stat. Ann. § 42:13.2.

b. Are certain executive functions covered?

Executive functions such as serving on city council, voting to break a tie, or signing or vetoing legislation, are covered only when they occur in the context of a meeting of a public body which is otherwise covered.

c. Are only certain agencies subject to the act?

State executive branch agencies are not covered. La. Rev. Stat. Ann. § 42:13.2.

2. Legislative bodies.

Covered. La. Rev. Stat. Ann. § 42:13.2. The state legislature itself is governed by somewhat different provisions under the open meeting law. La. Rev. Stat. Ann. § 42:18, 42:21

3. Courts.

Judicial proceedings are not covered. La. Rev. Stat. Ann. § 42:13.2.. Meetings of judges in their administrative or rulemaking capacities also are not covered. *Imbornone v. Early*, 401 So.2d 953 (La. 1981).

4. Nongovernmental bodies receiving public funds or benefits.

Nongovernmental bodies receiving public funds are covered if they also possess policy-making, advisory or administrative functions. *See Guste v. Nicholls College Foundation*, 564 So.2d 682 (La. 1990); *Spain v. Louisiana High School Athletic Association*, 398 So.2d 1386 (La. 1981). *See also Louisiana Insurance Guaranty Ass'n v. Commission on Ethics for Public Employees*, 656 So. 2d 670 (La. App. 1st Cir.), *writ denied*, 662 So. 2d 467 (La. 1995) (Louisiana Insurance Guaranty Association subject to Open Meeting Law by statute); Op. Att’y Gen. 95-321 (community action agency is private, nonprofit corporation, but subject to Open Meeting Law by statute. La. Rev. Stat. Ann. § 23:62); Op. Att’y Gen.

82-529 (meetings of the New Orleans Citywide Development Corporation (NOCDC), a nonprofit corporation formed for the advancement of economic development which makes loans to individuals and businesses, are covered by the Open Meeting Law because NOCDC receives city funds and possesses policy-making and advisory functions); Op. Att’y Gen. 89-352 (meetings of public university faculty senate are covered); Op. Att’y Gen. 94-333 (the LSU student government is a public body for purposes of Open Meeting Law). In 1992, over the strenuous opposition of the Louisiana Press Association, the Legislature enacted a special statute that may be construed as having exempted from the Open Meeting Law certain public university alumni associations and support foundations. The new statute declares that if such an organization meets a porous three-part test, it “shall not be deemed to be a public or quasi-public corporation . . . for any purpose whatsoever . . .” La. Rev. Stat. Ann. § 17:3390. *See also* Op. Att’y Gen. 91-203 (LSU “Tiger Athletic Foundation” held to be a “private, nonprofit corporation”).

5. Nongovernmental groups whose members include governmental officials.

Such groups may be covered in certain instances. *See Spain v. Louisiana High School Athletic Association*, 398 So.2d 1386 (La. 1981) (Louisiana High School Athletic Association meetings are covered by the Open Meeting Law even though private as well as public schools belong to the LHSAA and the organization is technically a “voluntary” one because LHSAA performs a function entrusted to public bodies, is funded by public money earned by state schools at athletic events, performs a policy-making, advisory, and administrative function in an area within the primary control of public bodies, and is comprised of school principals who are employees of school boards). *But see* La. Rev. Stat. Ann. § 17:3390(B)(l) (if majority of public university foundation board members are not public university board members or officials, foundation not deemed to be a public or quasi-public corporation; may apply to Open Meeting Law); Op. Att’y Gen. 98-40 (Louisiana School Board Association is not subject to Open Meeting Law).

6. Multi-state or regional bodies.

Multistate bodies are not referred to in the statute. Regional planning bodies with jurisdiction limited to Louisiana would be covered. La. Rev. Stat. Ann. § 42:13.2.

7. Advisory boards and commissions, quasi-governmental entities.

Boards and commissions created pursuant to public authority and that possess advisory functions are covered by the Open Meeting Law. La. Rev. Stat. Ann. § 42:4.2(A)(2). *See e.g., Hoffpauir v. State, Dept. of Public Safety and Corrections*, 762 So. 2d 1219 (La. App. 1st Cir.), *writ denied*, 772 So. 2d 652, (La. 2000) (Louisiana State Board of Prison Pardons is subject to Open Meeting Law); Op. Att’y Gen. 95-313 (committee of private citizens appointed by mayor for discussion, research and advice subject to Open Meeting Law); Op. Att’y Gen. 92-726 (Caddo Parish Special Education Advisory Council and its subcommittees are public bodies subject to Open Meeting Law); Op. Att’y Gen. 92-476 (Lake Pontchartrain Basin Foundation subject to Open Meeting Law); Op. Att’y Gen. 92-299 (advisory board to public library); Op. Att’y Gen. 89-481 (citizens’ advisory committee on city charter revision; appointed by Mayor); Op. Att’y Gen. 87-779 (medical staff of a parish [county] hospital district is covered by Open Meeting Law because it is created pursuant to public authority and is authorized to give advice and assistance to the hospital district commission, to promulgate rules and regulations for the hospital staff, and to approve appointment of the hospital director); Op. Att’y Gen. 79-1392 (an advisory commission appointed by the mayor, comprised of private citizens and executive officials, and granted advisory functions is governed by the Open Meeting Law; in function, the commission can be classified as a subcommittee of a municipal governing body). *But see* La. Rev. Stat. Ann. § 17:3390(B)(l) (certain university foundations not deemed public or quasi-public corporations); Op. Att’y Gen. 91-203 (LSU Tiger Athletic Foundation held to be a “private,

nonprofit corporation”); Op. Att’y Gen. 96-441 (Industry Task Force/Advisory Group on Unnecessary Rules and Regulations in State Government is not a public body because membership is voluntary and it was not created by any legal entity). An advisory board created and governed by federal law, however, is not subject to the Louisiana Open Meeting Law, even though the board functions within the state university system. *Dorson v. Louisiana*, 657 So. 2d 755 (La. App. 4th Cir.), writ denied, 662 So. 2d 472 (La. 1995) (Institutional Animal Care and Use Committee not subject to Open Meeting Law).

8. Other bodies to which governmental or public functions are delegated.

Covered at least insofar as the entity is supported by tax derived funds and sets policy in the distribution of those funds. *Seghers v. Community Advancement Inc.*, 357 So.2d 626 (La. App. 1st Cir. 1978) (Private nonprofit agency to which city and parish [county] governing bodies have delegated the duties of administering anti-poverty programs is covered by Open Meeting Law). See also *Spain v. LHSAA*, 398 So. 2d 1386 (La. 1981); *Guste v. Nicholls College Foundation*, 564 So.2d 684 (La. 1990) (citing *Seghers* with approval). But see *Property Insurance Association of Louisiana*, 31 So.3d 1012 (La. 2010) (fire insurance rating association not public body, applying four-part test: whether entity was created by the Legislature; whether entity’s powers were specifically defined by Legislature; whether property of entity belongs to public and whether entity’s functions are exclusively of public character and performed solely for public benefit); *M.K.L. Dev., L.L.C. v. City of New Orleans*, 772 So. 2d 711 (La. App. 4th Cir.), writ denied, 778 So. 2d 1146 (La. 2001) (finding that private nonprofit corporation subleasing a building from the government and then sub-leasing space within the building to tenants not performing any sort of “governmental function” described in *Seghers* and is not a public body). But a cooperative electric corporation that receives no public funds is not a public body under the Open Meeting Law even though it can set rates without the approval of the state Public Service Commission. *Humeriager v. Dixie Electric Membership Corp.*, 434 So.2d 590 (La. App. 1st Cir.), writ denied, 440 So.2d 149 (La. 1983). See also La. Rev. Stat. Ann. § 17:3390(B)(l) (certain university foundations not deemed public or quasi-public corporations); Op. Att’y Gen. 00-144 (Workforce Investment Board is a public body); Op. Att’y Gen. 91-203 (LSU Tiger Athletic Foundation held to be a “private, nonprofit corporation”). Op. Att’y Gen. 96-227 (Lafayette Ass’n of Retarded Citizens is a public body because it receives public funds and administers governmental function in its anti-poverty program); Op. Att’y Gen. 94-259 (Louisiana Development Partnerships Inc., a nonprofit corporation created to implement government programs to offer low income housing is subject to act). Any “quasi-public nonprofit corporation” organized by a governmental entity under La. Rev. Stat. Ann. § 12:202.1(D) is subject to the Open Meeting Law. La. Rev. Stat. Ann. § 12:202.1(D); Op. Att’y Gen. 93-628 (Almonaster-Michoud Industrial District Center Inc.); Op. Att’y Gen. 94-442 (Floodcomm Corporation). In addition, a committee or subdivision of a public body subject to the Open Meeting Law is itself subject to the Open Meeting Law. La. Rev. Stat. Ann. 42:4.2(A)(2). Such a subgroup may hear and review matters as authorized by its parent public body, but may not take action in matters that are the business of the parent public body. Op. Att’y Gen. 96-77.

9. Appointed as well as elected bodies.

The statute makes no distinction between appointed and elected bodies, although, for other reasons discussed elsewhere in this outline, not all appointed bodies are covered by the Open Meeting Law.

D. What constitutes a meeting subject to the law.

1. Number that must be present.

a. Must a minimum number be present to constitute a “meeting”?

A simple majority of the total membership of a public body must be present to constitute a “meeting.” La. Rev. Stat. Ann. § 42:4.2(A)(l) and (2). Thus, a gathering of a quorum of members at which business

is discussed is subject to the Open Meeting Law, even if labeled an “informal supper meeting.” Op. Att’y Gen. 96-207. Proxies may not vote and do not count in determining whether a quorum is present. Op. Att’y Gen. 00-204; Op. Att’y Gen. 93-708. A member may not vote via a video telephone. Op. Att’y Gen. 99-385. If the members rotate being present to avoid creating a quorum, such “walking quorums” are a violation of the Open Meeting Law. Op. Att’y Gen. 85-113. See also Op. Att’y Gen. 92-166 (law may not be circumvented “in any unannounced or secretive manner,” including telephone contact among quorum to decide on a course of action). See also Op. Att’y Gen. 99-50 and 00-144 (there is no violation where less than an actual quorum of the public body or a committee of a public body meets where no decisions, votes, or other actions are taken).

Recent opinions of the Attorney General have emphasized that the Open Meetings Law requires the physical presence of members of a public body at open meetings in order to participate in any matter. Any participation by telephone, whether to obtain a quorum or to allow voting by non-present board members is a violation of the law. Op. Att’y Gen. 02-0040; see also Op. Att’y Gen. 01-0256 (non-present board members cannot be counted by telephone to form a quorum or vote by voice or facsimile); Op. Att’y Gen. 00-423 (deliberation or act by teleconferencing would be a violation of the open meetings law).

b. What effect does absence of a quorum have?

In the absence of a quorum, the gathering is not subject to the Open Meeting Law. La. Rev. Stat. Ann. § 42:4.2(A), 42:5(A); Op. Att’y Gen. 93-414.

2. Nature of business subject to the law.

a. “Information gathering” and “fact-finding” sessions.

A meeting is covered where a quorum of a public body convenes “to deliberate or act on a matter which the public body as an entity has supervision, control, jurisdiction, or advisory power.” “Meeting” shall also mean the convening of a quorum of a public body by the public body or by another public official to receive information regarding a matter over which the public body has supervision, control, jurisdiction, or advisory power.” La. Rev. Stat. Ann. § 42:4.2(A)(l); Op. Att’y Gen. 93-315 (Meeting of Lafayette City Council held to discuss “goal seeking” is a meeting “to receive information” covered by section 42:4.2(A)(1)); Op. Att’y Gen. 89-389 (auditors’ exit conference with a quorum of members of parish school board is a meeting “to receive information” covered by section 4.2(A)(1).) The text of section 42:4.2(A)(1) reflects a 1988 amendment that overruled a 1987 Court of Appeal decision holding that, although the Mayor of New Orleans had addressed a local park commission concerning patronage, governance, and related matters, because the commission members said little or nothing in response, there was no “deliberation,” and thus no “meeting” within the purview of the Open Meeting Law. *Common Cause v. Morial*, 506 So.2d 167 (La. App. 4th Cir.), writ denied, 512 So.2d 458 (La. 1987).

b. Deliberations toward decisions.

The definition of meeting includes the convening of a public body “to deliberate.” La. Rev. Stat. Ann. § 42:4.2(A)(1). The Louisiana Constitution also states, “[n]o person shall be denied the right to observe the *deliberations* of public bodies . . . except in cases established by law.” art. XII, § 3 (emphasis added). “Deliberation” is broadly construed to include any discussion of the business of a public body. See, e.g., Op. Att’y Gen. 91-339 (board retreat in Arizona to plan future of public hospital).

3. Electronic meetings.

a. Conference calls and video/Internet conferencing.

The statute does not specify. Attorney General opinions conclude, however, that any participation by telephone, whether to obtain a quorum or to allow voting by non-present board members, is a violation

of the law. Op. Att’y Gen. 02-0040; *see also* Op. Att’y Gen. 01-0256 (non-present board members cannot be counted by telephone to form a quorum or vote by voice or facsimile); Op. Att’y Gen. 00-423 (deliberation or act by teleconferencing would be a violation of the open meetings law).

b. E-mail.

The statute does not specify, but the rationale of Op. Att’y Gen 93-137— that telephone polls of members of a public body may not be used to thwart the Open Meeting Law— would seem to apply.

c. Text messages.

No specific provision, but “meeting” is defined as “the convening of a quorum of a public body,” so text messaging between persons could be subject to the Open Meetings law only if the people exchanging messages constituted a quorum of the public body.

d. Instant messaging.

No specific provision, but “meeting” is defined as “the convening of a quorum of a public body,” so instant messaging between persons could be subject to the Open Meetings law only if the people exchanging messages constituted a quorum of the public body.

e. Social media and online discussion boards.

No specific provision, but “meeting” is defined as “the convening of a quorum of a public body,” so use of social media or online discussion boards could be subject to the Open Meetings law only if the people doing so constituted a quorum of the public body.”

E. Categories of meetings subject to the law.

1. Regular meetings.

a. Definition.

The statute does not define “regular meeting.” Notice provisions apply to “regular, special, or rescheduled” meetings. La. Rev. Stat. Ann. § 42:7.

b. Notice.

Generally must be provided by “all public bodies, except that the legislature and its committees and subcommittees, shall give written public notice of their regular meetings, if established by law, resolution or ordinance, at the beginning of each calendar year. Such notice shall include the dates, times and places of such meetings.” La. Rev. Stat. Ann. § 42:7(A)(1), (2). Any exception to the requirement for notice of date, time, place and agenda should be narrowly and strictly construed. *Wagner v. Beauregard Parish Police Jury*, 525 So.2d 166, 169 (La. App. 3rd Cir. 1988).

(1). Time limit for giving notice.

No later than 24 hours before the meeting and at the beginning of each calendar year if regular meetings are established by law, resolution, or ordinance. La. Rev. Stat. Ann. § 42:7(A)(1). *See Marien v. Rapides Parish Police Jury*, 717 So. 2d 1187 (La. App. 3rd Cir.), *writ denied*, 727 So. 2d 1166 (La. 1998); Op. Att’y Gen. 99-404.

(2). To whom notice is given.

Any member of the news media who requests notice shall be given notice of all meetings in the same manner as is given to members of the public body. La. Rev. Stat. Ann. § 42:7(A)(1).

(3). Where posted.

At the principal office of the public body holding the meeting, or if no such office exists, at the building where the meeting is held; or by publication in the official journal of the public body. La. Rev. Stat. Ann. § 42:7(A)(2); Op. Att’y Gen. 99-404.

(4). Public agenda items required.

A public body may not take up an item not on the agenda distributed at least twenty-four hours before the meeting except by a two-

thirds vote of the members present. Significant proposals must be identified specifically in the agenda. *Hayes v. Jackson Parish Sch. Bd.*, 603 So.2d 274 (La. App. 2d Cir. 1992). Agenda items must be more substantive and detailed than simply “old business,” “new business,” or “unfinished business.” Ops. Att’y Gen. 85-354 and 87-676. The notice need only be “reasonable,” however. *Shirley v. Beauregard Parish Sch. Bd.*, 615 So. 2d 17 (La. App. 3d Cir. 1993) (decision to hire individual for assistant principal vacancy not voidable because agenda stated only that it would “hear recommendations” for the position, and not that it would also act on the recommendations); *Organization of United Taxpayers v. Louisiana Housing Finance Agency*, 703 So. 2d 107 (La. App. 1st Cir. 1997), *writ denied*, 709 So. 2d 745 (La. 1998) (agenda item stating “Tax Credit Discussions” was sufficient notice of decision to grant extension of tax credits to a particular developer); *See also* Op. Att’y Gen. 93-230 (agenda must be reasonably clear so as to advise the public in general terms of the subjects to be discussed). A public body must vote affirmatively to enlarge the agenda before it votes on the substantive proposal to be added. *Hayes v. Jackson Parish Sch. Bd.*, *supra*; *Wagner v. Beauregard Parish Police Jury*, *supra*. Frequent use of the agenda amendment procedure should be avoided because such use could become a subterfuge for avoiding advance public notice of the actual agenda. Op. Att’y Gen. 87-649. A public body may not delegate its authority to determine its agenda. *Jackson v. Assumption Parish Sch. Bd.*, 652 So. 2d 549 (La. App. 1st Cir. 1995). (School Board improperly delegated to school superintendent the authority to determine agenda and determine who could appear at public meetings). A public body may require the use of agenda “forms” for public participation in setting agenda. Op. Att’y Gen. 94-152. A public body may not avoid giving notice and preparing an agenda for each meeting by giving one notice at the beginning of the year and declaring itself to be in “continuing session” with a number of “segments” of its one meeting. Op. Att’y Gen. 95-226.

(5). Other information required in notice.

Date, time, and place of the meeting, as well as the agenda. La. Rev. Stat. Ann. § 42:7(A)(1). There also must be attached to the notice of meeting a statement identifying the court, case number, and the parties relative to any pending litigation to be considered; and a statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation to be considered for which formal written demand has been received. La. Rev. Stat. Ann. 42:7(A)(1)(iii). The statement must be attached regardless whether such matters will be discussed in an executive session. *Id.*

(6). Penalties and remedies for failure to give adequate notice.

Same as for other provisions of Open Meeting Law. In *Wagner v. Beauregard Parish Police Jury* and *Hayes v. Jackson Parish Sch. Bd.*, *supra*, the courts voided actions taken in violation of the notice requirements of the statute (actions taken not specified in agenda). A court also may enter an injunction to prevent a public body from acting in conformity with a policy adopted at a meeting held without notice in violation of the Open Meeting Law. *Shirley v. Beauregard Parish Sch. Bd.*, 615 So. 2d 17 (La. App. 3d Cir. 1993) (school board enjoined from acting in conformity with improperly adopted “personnel selection policy”). *See* Op. Att’y Gen. 98-232 (actions in violation of notice requirements are voidable only if suit challenging same is commenced within 60 days of the action).

c. Minutes.

“All public bodies shall keep written minutes of all their open meetings.” La. Rev. Stat. Ann. § 42:7.1(A).

(1). Information required.

Minutes must include: (a) the date, time and place of the meeting; (b) the members of the public body recorded as either present or absent, (c) the substance of all matters decided, and at the request of any member, a record, by individual member, of any votes taken; and (d) any other information that the public body requests be included or

reflected in the minutes. La. Rev. Stat. Ann. § 42:7.1(A)(l) through (4). The minutes need not be a verbatim transcript of the meeting. Op. Att’y Gen. 94-376.

(2). Are minutes public record?

Yes. They “shall be available within a reasonable time after the meeting.” La. Rev. Stat. Ann. § 42:7.1(B). See Op. Att’y Gen. 97-397 (minutes of political subdivision of the state must be published in a newspaper; minutes of other public bodies need only be prepared in a presentable manner for review).

2. Special or emergency meetings.

a. Definition.

The statute does not define “special meetings.” “[C]ases of extraordinary emergency” are limited to “national disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude.” La. Rev. Stat. Ann. § 42:6.1(A)(5).

b. Notice requirements.

The notice requirements for “special meetings” are identical to the requirements for regular meetings. La. Rev. Stat. Ann. § 42:7.1(B). In cases of “extraordinary emergency,” the standard notice requirements do not apply. La. Rev. Stat. Ann. § 6.1(A)(5), 42:7(A)(1)(b)(iv). Nonetheless, the public body shall give such notice of an emergency meeting as the public body “deems appropriate and circumstances permit.” La. Rev. Stat. Ann. § 42:7(A)(1)(b)(iv).

(1). Time limit for giving notice.

Notice for special meetings shall be given no later than twenty-four hours before the meeting. La. Rev. Stat. Ann. § 42:7(A)(1)(b)(i); Op. Att’y Gen. 99-404. Notice for emergency meetings shall be given as the public body “deems appropriate and circumstances permit.” La. Rev. Stat. Ann. § 42:7(A)(1)(b)(iv).

(2). To whom notice is given.

Any member of the news media who requests notice shall be given notice of all meetings in the same manner as is given to members of the public body. La. Rev. Stat. Ann. § 42:7(A)(2)(b).

(3). Where posted.

At the principal office of the public body holding the meeting, or if no such office exists, at the building where the meeting is held, or by publication in the official journal of the public body. La. Rev. Stat. Ann. § 42:7(A)(2); Op. Att’y Gen. 99-404.

(4). Public agenda items required.

The statute does not contain a specific provision. To the extent possible, however, the public body should conform to the agenda requirements for regularly scheduled meetings. Those requirements include: A public body may not take up an item not on the agenda distributed at least twenty-four hours before the meeting except by a two-thirds vote of the members present. Significant proposals must be identified specifically in the agenda. *Hayes v. Jackson Parish Sch. Bd.*, 603 So.2d 274 (La. App. 2d Cir. 1992). Agenda items must be more substantive and detailed than simply “old business,” “new business,” or “unfinished business.” Ops. Att’y Gen. 85-354 and 87-676. The notice need only be “reasonable,” however. *Shirley v. Beauregard Parish Sch. Bd.*, 615 So. 2d 17 (La. App. 3d Cir. 1993) (decision to hire individual for assistant principal vacancy not voidable because agenda stated only that it would “hear recommendations” for the position, and not that it would also act on the recommendations); See also Op. Att’y Gen. 93-230 (agenda must be reasonably clear so as to advise the public in general terms of the subjects to be discussed). A public body must vote affirmatively to enlarge the agenda before it votes on the substantive proposal to be added. *Hayes v. Jackson Parish Sch. Bd.*, *supra*; *Wagner v. Beauregard Parish Police Jury*, *supra*. Frequent use of

the agenda amendment procedure should be avoided because such use could become a subterfuge for avoiding advance public notice of the actual agenda. Op. Att’y Gen. 87-649. A public body may not delegate its authority to determine its agenda. *Jackson v. Assumption Parish Sch. Bd.*, 652 So. 2d 549 (La. App. 1st Cir. 1995). (School Board improperly delegated to school superintendent the authority to determine agenda and determine who could appear at public meetings). A public body may require the use of agenda “forms” for public participation in setting agenda. Op. Att’y Gen. 94-152. A public body may not avoid giving notice and preparing an agenda for each meeting by giving one notice at the beginning of the year and declaring itself to be in “continuing session” with a number of “segments” of its one meeting. Op. Att’y Gen. 95-226.

(5). Other information required in notice.

Notice for special meetings should include date, time, and place of the meeting, as well as the agenda. La. Rev. Stat. Ann. § 42:7(A)(1). There also must be attached to the notice of meeting a statement identifying the court, case number, and the parties relative to any pending litigation to be considered; and a statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation to be considered for which formal written demand has been received. La. Rev. Stat. Ann. 42:7(A)(l)(iii). The statement must be attached regardless whether such matters will be discussed in an executive session. *Id.* Notice for emergency meetings shall be given as the public body “deems appropriate and circumstances permit.” La. Rev. Stat. Ann. § 42:7(A)(1)(b)(iv).

(6). Penalties and remedies for failure to give adequate notice.

Same as for other provisions of Open Meeting Law. In *Wagner v. Beauregard Parish Police Jury* and *Hayes v. Jackson Parish Sch. Bd.*, *supra*, the courts voided actions taken in violation of the notice requirements of the statute (actions taken not specified in agenda). A court also may enter an injunction to prevent a public body from acting in conformity with a policy adopted at a meeting held without notice in violation of the Open Meeting Law. *Shirley v. Beauregard Parish Sch. Bd.*, 615 So. 2d 17 (La. App. 3d Cir. 1993) (school board enjoined from acting in conformity with improperly adopted “personnel selection policy”).

c. Minutes.

“All public bodies shall keep written minutes of their open meetings.” La. Rev. Stat. Ann. § 42:7.1(A).

(1). Information required.

(1) The date, time and place of the meeting; (2) the members of the public body recorded as either present or absent; (3) the substance of all matters decided, and at the request of any member, of any votes taken, and (4) any other information that the public body requests be included or reflected in the minutes. La. Rev. Stat. Ann. § 42:7.1(A)(1)-(4).

(2). Are minutes a public record?

Yes. They “shall be available within a reasonable time after the meeting.” La. Rev. Stat. Ann. § 42:7.1(B).

3. Closed meetings or executive sessions.

a. Definition.

The statute does not define “executive session” except by reference to certain “[e]xceptions to open meetings.” See La. Rev. Stat. Ann. § 42:6.1(A).

b. Notice requirements.

A public body may hold executive sessions only upon an affirmative vote of two-thirds of its constituent members present at an open meeting for which notice was given pursuant to La. Rev. Stat. Ann. § 42:7. La. Rev. Stat. Ann. § 42:6. Once a meeting is called and notice given,

it may not be canceled or converted into an executive session except in compliance with statutory procedure. *Norris v. Monroe City School Bd.*, 580 So.2d 425 (La. App. 2nd Cir. 1991).

(1). Time limit for giving notice.

No special requirements for executive sessions.

(2). To whom notice is given.

No special requirements for executive sessions.

(3). Where posted.

No special requirements for executive sessions.

(4). Public agenda items required.

No special requirements for executive sessions.

(5). Other information required in notice.

No special requirements for executive sessions. Note, however, that there must be attached to the notice of meeting a statement identifying the court, case number, and the parties relative to any pending litigation to be considered; and a statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation to be considered for which formal written demand has been received. La. Rev. Stat. Ann. 42:7(A)(l)(iii). The statement must be attached regardless whether such matters will be discussed in an executive session. *Id.*

(6). Penalties and remedies for failure to give adequate notice.

No special requirements for executive sessions.

c. Minutes.

Minutes are required only for “open meetings,” not for “executive sessions.” La. Rev. Stat. Ann. § 42:7.1(A).

(1). Information required.

Not applicable.

(2). Are minutes a public record?

Not applicable.

d. Requirement to meet in public before closing meeting.

A public body may hold nonpublic executive sessions only upon an affirmative vote of two-thirds of its constituent members present at an open meeting. La. Rev. Stat. Ann. § 42:6.

e. Requirement to state statutory authority for closing meetings before closure.

Closure is limited to those matters specifically exempted and the “reason” for going into executive session shall be recorded in the minutes. La. Rev. Stat. Ann. § 42:6. *See also Norris v. Monroe City School Bd.*, *supra.*; *Courvelle v. Louisiana Recreational and Used Motor Vehicle Commission*, 21 So.3d 340 (La.App. 1st Cir. 2009) (specific reasons must be given as to how a public discussion of certain litigation would be detrimental).

f. Tape recording requirements.

None.

F. Recording/broadcast of meetings.

1. Sound recordings allowed.

Anyone present at a public meeting may make a record of the proceedings on video or tape (audio), “film” the proceedings (presumably including both still photography and motion pictures), or broadcast them live. La. Rev. Stat. Ann. § 42:8(A); Op. Att’y Gen. 95-277; Op.

Att’y Gen. 94-14. But a regulation by a public body prohibiting recording of executive sessions by members does not violate the Open Meeting Law. *Dean v. Guste*, 414 So.2d 862 (La. App., 4th Cir.), *writ denied*, 417 So.2d 366 (La.), *cert. denied*, 459 U.S. 1070, 103 S.Ct. 489 (1982). The public body shall establish standards to insure proper decorum when lighting, recording, or broadcasting equipment is in use. La. Rev. Stat. Ann. 42:8(B); Op. Att’y Gen. 95-277.

2. Photographic recordings allowed.

No specific provision for or limitation of photographic recordings. Presumably, however, section 42:8(A) permits both motion picture “filming” and still photography.

G. Are there sanctions for noncompliance?

The court has jurisdiction and authority to issue all necessary orders to require compliance with, or to prevent noncompliance with, or to declare the rights of parties under the Open Meeting Law. Any noncompliance with the orders of the court may be punished as contempt of court. La. Rev. Stat. Ann. § 42:11(B).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

1. Character of exemptions.

a. General or specific.

Specific. La. Rev. Stat. Ann. § 42:6 and 42:6.1.

b. Mandatory or discretionary closure.

Discretionary. La. Rev. Stat. Ann. § 42:6; *See also Louisiana Debating & Literary Ass’n v. City of New Orleans*, 42 F.3d 1483 (5th Cir. 1995), *cert. denied* 515 U.S. 1145 (1995). (Louisiana Commission on Human Rights not required to meet in executive session even where statute allows it to do so).

2. Description of each exemption.

a. Discussion of the character, professional competence, or physical or mental health of a person, unless that person requests that the discussion be held at an open meeting. The exception may not be used to call an executive session for discussion of the appointment of a person to a public body. La. Rev. Stat. Ann. § 42:6.1(A)(l). *See Parent-Community Alliance for Quality Ed. Inc. v. Orleans Parish Sch. Bd.*, 385 So.2d 33 (La. App. 4th Cir.), *writ denied*, 386 So.2d 1379 (La. 1980) (allowing use of executive sessions to interview and discuss qualifications of candidates for school superintendent, who is considered an executive official, but not to engage in the selection process by vote or polling of committee members); *accord, Brown v. East Baton Rouge Parish Sch. Bd.*, 405 So.2d 1148 (La. App. 1st Cir. 1981). Op. Att’y Gen. 91-158A. The Attorney General has expressed the opinion that this exemption includes discussion of juridical and artificial persons (i.e. corporations and partnerships), as well as individual human beings, Op. Att’y Gen. 96-358, but there is no case law specifically addressing this issue. One Attorney General opinion suggests that a public body is *compelled* by “privacy considerations” to discuss public employee “rating forms” in executive session. Op. Att’y Gen. 91-80, *citing Trabon v. Larrivee*, 365 So.2d 294 (La. App. 3rd Cir. 1979) (employee performance evaluations privileged from Public Records Act disclosure by state constitutional privacy right). *Compare* Op. Att’y Gen. 91-48, released only 15 days prior to Op. Att’y Gen. 91-80 (Open Meeting Law does *not require* executive session discussion of certain school board matters, but public disclosure may constitute actionable invasion of privacy, citing state constitution Article I, section 5 and *Trabon v. Larrivee, supra.*) Section 6.1(A)(l) was amended in 1989 to require that except in cases of “extraordinary emergency,” a public body must notify a person who is to be discussed at an executive session held under authority of the section. The notification must be in writing and must be provided at least twenty-four hours before the meeting.

b. Strategy sessions or negotiations with respect to (a) collective bargaining, (b) prospective litigation after formal written demand, or

(c) litigation, “when an open meeting would have a detrimental effect on the bargaining or litigating position of the public body.” 42:6.1(A)(2). The Attorney General has stated that it is not enough to state that the reason for going into executive session is “for the purpose of discussing the negotiations being conducted . . . on behalf of the Board.” The negotiations must be specifically identified. The type of negotiations should be kept secret only if the negotiations would be “seriously jeopardized.” “This should be done only after advice from counsel and only in the most extreme circumstances.” Op. Att’y Gen. 86-434. Subsequent public disclosure of discussions and strategies held in executive session is not required. Op. Att’y Gen. 99-51. Opposing parties may attend the executive session without opening it to the general public. *Id.* Merely stating that an executive session is to consider “personnel, negotiations and/or litigation” violates the Open Meeting Law. Op. Att’y Gen. 85-789. There also must be attached to the notice of meeting a statement identifying the court, case number, and the parties relative to any pending litigation to be considered; and a statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation to be considered for which formal written demand has been received. La. Rev. Stat. Ann. § 42:7(A)(1)(iii). The statement must be attached regardless whether such matters will be discussed in an executive session. *Id.*

c. Discussion regarding security personnel, plans or devices. La. Rev. Stat. Ann. § 42:6.1(A)(3).

d. Investigative proceedings regarding allegations of misconduct. La. Rev. Stat. Ann. § 42:6.1(A)(4); Op. Att’y Gen. 98-134 (death investigations conducted by Child Death Review Panel may be conducted in executive session).

e. Cases of extraordinary emergency such as natural disaster or civil disturbances. La. Rev. Stat. Ann. § 42:6.1(A)(5)

f. Certain meetings of the State Mineral Board at which confidential records or matters are discussed. La. Rev. Stat. Ann. § 42:6.1(A)(6).

g. Conferences between a school board and individual students, tutors or parents regarding problems of such students, tutors or parents unless the student, tutor or parent requests an open meeting. La. Rev. Stat. Ann. § 42:6.1(A)(7).

h. “[A]ny other matters now provided for or as may be provided for by the legislature.” La. Rev. Stat. Ann. § 42:6.1(A)(8). Two Attorney General opinions interpret this provision as permitting an executive session for the purpose of discussing any record to which the public is denied access under the Public Records Act. Op. Att’y Gen. 92-698 (discussion of “personal and/or corporate” tax returns and financial records by local citizens committee administering federal small business loan funds); Op. Att’y Gen. 89-550 (discussion of similar records by loan screening committee of Louisiana Economic Development Corporation). Neither opinion cites a single case in support of this conclusion, nor does either opinion mention the general presumption favoring the openness of public meetings and disfavoring exemptions. That presumption would seem to have particular force when there is no specific statutory provision authorizing an executive session. Indeed, precisely this analysis was advanced in Op. Att’y Gen. 90-132, which emphasizes that “any exception to the Open Meetings Law must be narrowly construed,” citing *Brown v. East Baton Rouge Parish Sch. Bd.*, *supra* (“eight enumerated reasons for an executive session are exclusive”); See also Op. Att’y Gen. 89-389.

B. Any other statutory requirements for closed or open meetings.

1. La. Rev. Stat. Ann. § 46:1073(B) (part of the “Enhanced Ability to Compete” Act) (discussion of “marketing strategies and strategic plans” of public hospitals may be held in executive session); See also, Op. Att’y Gen. 93-62; Op. Att’y Gen. 95-193; Op. Att’y Gen. 95-316; Op. Att’y Gen. 95-346 (applying § 46:1073(B)). Two related cases, *St. Mary Anesthesia Assocs. Inc. v. Hosp. Serv. Dist. No. 2 of Parish of St. Mary*, 836 So. 2d 379 (La. App. 1st Cir.), *writ denied*, 840 So. 2d 577 (La. 2003) and *Joseph v. Hosp. Serv. Dist. No. 2 of the Parish of St. Mary*, 805

So. 2d 400 (La. App. 1st Cir.), *writ denied*, 813 So. 2d 1088 (La. 2002), contested the constitutionality of La. Rev. Stat. Ann. § 46:1070-1076, the Enhanced Ability to Compete Act (“EACA”). The First Circuit held that the clear language of the Louisiana Constitution stated that the legislature had the authority to establish exceptions to the public’s right to open meetings, and because Section 3 is not a “fundamental, inalienable right, in the sense of those enumerated rights under Article 1,” the EACA exception was not unconstitutionally overbroad.

2. La. Rev. Stat. Ann. § 17:3390 (may entirely exempt certain university foundations).

C. Court mandated opening, closing.

None that we are aware of, although of course the courts may mandate access to certain governmental proceedings pursuant to the First Amendment, the Louisiana Constitution, or the common law.

Discovery of proceedings of closed meeting

The proceedings of a closed meeting or executive session are discoverable. See *Connick v. Brechtel*, 713 So. 2d 583 (La. App. 4th Cir. 1998). In *Connick*, the District Attorney brought suit against members of the Orleans Parish School Board for violation of the Open Meeting Law, alleging members made a binding decision with regard to the superintendent’s employment while in executive session. See La. Rev. Stat. Ann. § 42:10(B) (district attorney enforces Open Meeting Law for the district he serves). Board members refused to be deposed on the contents of the executive session, in response to which the District Attorney moved for, and the trial court granted, a motion to compel. School Board argued on appeal that the entire executive session was privileged from discovery, or in the alternative, that such portions of the session as dealt with “the character, professional competence, or physical or mental health of a person” — as per the exemption from the Open Meeting Law provided by La. Rev. Stat. Ann. § 42:6.1(A)(1) — were privileged. The Fourth Circuit held, to the contrary, “the fact that some matters may be discussed in executive session does not render the School Board’s discussions and actions taken in executive session privileged. Such a rule would completely nullify Louisiana’s Open Meetings Law. . . .” A concurring judge pointed out that “[a] substantial purpose of the executive session exceptions is to provide for unimpeded discussion at the time of the discussion. After the fact discovery of such discussion is not the same impediment to discussion as contemporaneous disclosure would be.” The court ordered that members submit to deposition and other discovery without any privilege whatsoever, and denied a motion for a protective order restricting the District Attorney’s disclosure of information within the provenance of section 42:6.1(A)(1).

III. MEETING CATEGORIES -- OPEN OR CLOSED.

A. Adjudications by administrative bodies.

Closed, if the bodies are “quasi-judicial in nature and function.” *Central Metairie Civic Association v. Parish of Jefferson*, 478 So. 2d 1298 (La. App. 5th Cir. 1985), *writ denied*, 481 So. 2d 631 (La. 1986) (zoning appeals board or boards of adjustment hearings are not covered by the Open Meeting Law).

B. Budget sessions.

Not exempted.

C. Business and industry relations.

Not exempted.

D. Federal programs.

Not exempted.

E. Financial data of public bodies.

Not exempted.

F. Financial data, trade secrets or proprietary data of

private corporations and individuals.

Not specifically exempted in Open Meeting Law, but proprietary or trade secret information which has been submitted to a public body is protected under the Public Records Act. La. Rev. Stat. Ann. § 44:3.2. Additionally, some opinions of the Attorney General interpreting the Public Records Act have exempted such information purportedly of a private or confidential nature. Op. Att’y Gen. 83-493; 82-860; 87320; 87-355; 89-550, 89-598, and 92-698. The Louisiana Constitution protects against invasions of privacy. Article I, Section 5.

G. Gifts, trusts and honorary degrees.

Not Exempted.

H. Grand jury testimony by public employees.

Closed. Judicial proceedings are not covered by the Open Meeting Law. La. Rev. Stat. Ann. § 6.1(B).

I. Licensing examinations.

May be closed if they involve discussion of the character, professional competence, or physical or mental health of any person, unless that person requests an open meeting. La. Rev. Stat. Ann. § 42:6.1(A)(1). Otherwise, such examinations are open. Op. Att’y Gen. 74-1103 (administrative hearing to consider the revocation of a license and closing of a nursing home shall be open to the public); Op. Att’y Gen. 77-1 (City-parish council meeting to discuss the appeal of a denial of an alcoholic beverage control license must be open unless the character, professional competence, or physical or mental health of the potential licensee is discussed).

J. Litigation; pending litigation or other attorney-client privileges.

A public body may hold an executive session to conduct a strategy session or negotiations with respect to prospective litigation after formal written demand, or litigation when an open meeting would have a detrimental effect on the litigating position of the public body. La. Rev. Stat. Ann. § 42:6.1(A)(2).

K. Negotiations and collective bargaining of public employees.

A public body may hold an executive session to conduct strategy sessions or negotiations with respect to collective bargaining if an open meeting would have a detrimental effect on the bargaining position of the public body. La. Rev. Stat. Ann. § 42:6.1(A)(2).

1. Any sessions regarding collective bargaining.

Only those which would have a detrimental effect on the bargaining position of the public body. La. Rev. Stat. Ann. § 42:6.1(A)(2).

2. Only those between the public employees and the public body.

The statute does not make this distinction.

L. Parole board meetings, or meetings involving parole board decisions.

Not exempted by the Open Meeting Law. See *Hoffpauir v. State, Dept. of Public Safety and Corrections*, 762 So. 2d 1219 (La. App. 1st Cir.), writ denied, 772 So. 2d 652 (La. 2000). A 1996 statute, however, gives the Parole Board the ability to promulgate its own “rules, regulations, policy and guidelines governing the disclosure and dissemination of information regarding sex offenders to the public.” La. Rev. Stat. Ann. § 15:547. This statute may be invoked to create additional “exceptions” to the Open Meeting Law.

M. Patients; discussions on individual patients.

May be closed unless that person requests an open meeting if discussion involves physical or mental health of the patient. La. Rev. Stat. Ann. § 42:6.1(A)(l).

N. Personnel matters.

May be closed if discussion involves the character, professional competence or physical or mental health of a person, unless that person requests an open meeting. La. Rev. Stat. Ann. § 42:6.1(A)(l).

1. Interviews for public employment.

Generally not exempt. May be closed only if discussing the character, professional competence or physical or mental health of the person. La. Rev. Stat. Ann. § 42:6.1(A)(1). It is not proper to close a meeting to make a selection or recommendation concerning hiring. Op. Att’y Gen. 94-14.

2. Disciplinary matters, performance or ethics of public employees.

Generally not exempt. May be closed only if discussing the character, professional competence or physical or mental health of the person. La. Rev. Stat. Ann. § 42:6.1(A)(1). See also Op. Att’y Gen. 94-561 (La. State Board of Certified Social Work examining must hold disciplinary hearings in public).

3. Dismissal; considering dismissal of public employees.

Generally not exempt. May be closed only if discussing the character, professional competence or physical or mental health of the person. La. Rev. Stat. Ann. § 42:6.1(A)(1).

O. Real estate negotiations.

Not exempted.

P. Security, national and/or state, of buildings, personnel or other.

A public body may hold an executive session to discuss a report, development or course of action regarding security personnel, plans, or devices. La. Rev. Stat. Ann. § 42:6.1(A)(3).

Q. Students; discussions on individual students.

May be closed unless student requests that meeting be open. La. Rev. Stat. Ann. § 42:6.1(A)(7).

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

A. When to challenge.

1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

Not specified.

2. When barred from attending.

Actions to enforce the Open Meeting Law should be filed as promptly as possible after an alleged violation occurs.

3. To set aside decision.

Suits to void actions must be brought within sixty days of such action. La. Rev. Stat. Ann. § 42:9. For obvious reasons, however, other action to enforce the Open Meeting Law should be filed as promptly as possible after an alleged violation occurs.

4. For ruling on future meetings.

Not specified.

B. How to start.

1. Where to ask for ruling.

a. Administrative forum.

Not provided for in the Open Meeting Law.

(1). Agency procedure for challenge.

Not applicable.

(2). Commission or independent agency.

Not applicable.

b. State attorney general.

“The Attorney General shall enforce the provisions of the [Open Meeting Law] throughout the state. He may institute enforcement proceedings on his own initiative and shall institute such proceedings upon a complaint filed with him by any person, unless written reasons are given as to why the suit should not be filed.” La. Rev. Stat. Ann. § 42:10(A) Each district attorney also is required to enforce the Open Meeting Law throughout the judicial district within which he serves. La. Rev. Stat. Ann. § 42:10(B)

c. Court.

Court review is available but there are no administrative remedies.

2. Applicable time limits.

Not specified except suits to void actions must be brought within 60 days of such action. La. Rev. Stat. Ann. § 42:9; *Sandi's II, Inc. v. Assumption Parish Police Jury*, 837 So. 2d 124 (La. App. 1st Cir. 2002) (dismissal of Open Meeting Law claims correct because brought beyond 60-day period). For obvious reasons, however, action to enforce the Open Meeting Law should be filed as promptly as possible after an alleged violation occurs.

3. Contents of request for ruling.

No specified pleading format.

4. How long should you wait for a response?

Not later than 60 days if you want to void action taken by public body meeting in violation of the Open Meeting Law. La. Rev. Stat. Ann. § 42:9.

5. Are subsequent or concurrent measures (formal or informal) available?

Any person may file a complaint with the state Attorney General or the district attorney, each of whom must institute enforcement proceedings unless written reasons are given as to why the suit should not be filed. La. Rev. Stat. Ann. § 42:10.

C. Court review of administrative decision.**1. Who may sue?**

Any person who has been denied any right conferred by the Open Meeting Law or who has reason to believe that the law has been violated. La. Rev. Stat. Ann. § 42:10(C).

2. Will the court give priority to the pleading?

Yes. “Enforcement proceedings shall be tried by preference and in summary manner. Any appellate court to which the proceeding is brought shall place it on its preferential docket, shall hear it without delay, and shall render a discussion as soon as practicable.” La. Rev. Stat. Ann. § 42:12(B).

3. Pro se possibility, advisability.

As with any lawsuit, it is possible but probably not advisable to proceed *pro se*. Louisiana courts are unaccustomed to litigation conducted by *pro se* plaintiffs. The litigant’s lack of familiarity with court rules and procedures may increase the risk of waiving or failing to assert properly the right of access to meetings.

4. What issues will the court address?**a. Open the meeting.**

Yes; writ of mandamus or injunctive relief is available. La. Rev. Stat. Ann. § 42:11.

b. Invalidate the decision.

Yes, if suit is brought within 60 days of the action and the public body did not subsequently ratify the action at a meeting that fully com-

plied with the Open Meeting Law. La. Rev. Stat. Ann. § 42:9; *Marien v. Rapides Parish Police Jury*, 717 So. 2d 1187 (La. App. 3rd Cir.), *writ denied*, 709 So. 2d 745 (La. 1998) (ratification can cure a violation of the Open Meeting Law); *Delta Development Co. Inc. v. Plaquemines Parish Comm’n Council*, 451 So. 2d 134 (La. App. 4th Cir.), *writ denied*, 456 So. 2d 172 (La. 1984) (court declined to void a resolution authorizing a lawsuit because the public body subsequently ratified the resolution in an open meeting where there was full discussion of the resolution).

c. Order future meetings open.

Yes; injunctive relief is available “to prevent noncompliance with” the Open Meeting Law. La. Rev. Stat. Ann. § 42:11.

5. Pleading format.

Not specified in the Statute.

6. Time limit for filing suit.

Not specified except suits to void actions must be brought within 60 days of such action. La. Rev. Stat. Ann. § 42:9. *Greenmon v. City of Bossier City*, — So.3d —, 2011 WL 2586863 (La. 7/1/11); *Hoffpauir v. State Dept. of Public Safety and Corrections*, 762 So. 2d 1219 (La. App. 1st Cir.), *writ denied*, 772 So. 2d. 652 (La. 2000). (Sixty day time limit is preemptive, not prescriptive, and may not be interrupted or suspended). For obvious reasons, however, an action to enforce the Open Meeting Law should be filed as promptly as possible after an alleged violation occurs.

7. What court.

The district court for the parish in which the meeting took place or will take place. La. Rev. Stat. Ann. § 42:12(A).

8. Judicial remedies available.

Writ of mandamus, injunctive relief, declaratory relief, judgment rendering action void. La. Rev. Stat. Ann. § 42:11(A). *See also Twin Parish Port Comm’n v. Berry Bros. Inc.*, 650 So. 2d 748 (La. 1995). (District Court finding that an ordinance was adopted in violation of the Open Meeting Law renders the action null and void, not unconstitutional, and does not trigger immediate Louisiana Supreme Court review).

9. Availability of court costs and attorneys’ fees.

The party who brings enforcement proceedings and prevails shall be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may award him reasonable attorney fees or an appropriate portion thereof. If the court finds that the proceeding was of a frivolous nature and was brought with no substantial justification, it may award reasonable attorney fees to the prevailing party. La. Rev. Stat. Ann. § 42:11(C); *See Shirley v. Beauregard Parish Sch. Bd.*, 615 So. 2d 17 (La. App. 3d Cir. 1993) (awarding attorney fees where plaintiff partially successful).

10. Fines.

Any member of a public body who “knowingly and willfully” participates in a meeting that violates the Open Meeting Law shall be personally liable for a civil penalty of up to \$100 per violation. Suit must be instituted within sixty days of the violation. La. Rev. Stat. Ann. § 42:13.

D. Appealing initial court decisions.**1. Appeal routes.**

The appeal route is to the state intermediate appellate court for the circuit where the district court is located, then, upon application for writ of certiorari, to the Louisiana Supreme Court. *See also Twin Parish Port Comm’n v. Berry Bros. Inc.*, 650 So. 2d 748 (La. 1995) (District Court finding that an ordinance was adopted in violation of the Open Meeting Law renders the action null and void, not unconstitutional, and does not trigger immediate Louisiana Supreme Court review).

2. Time limits for filing appeals.

Within 60 days.

3. Contact of interested amici.

The Louisiana Press Association is keenly interested in enforcement of the Open Meeting Law. Address: 404 Europe St., Baton Rouge, Louisiana 70802. Telephone number: (225) 344-9309. Attention: Pamela Mitchell-Wagner, Executive Director.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

V. ASSERTING A RIGHT TO COMMENT.

A. Is there a right to participate in public meetings?

The Louisiana Legislature recently amended the statute to mandate that each public body conducting an open meeting must provide an opportunity for public comment at the meeting, subject to reasonable rules, regulations, and restrictions. La. Rev. Stat. Ann. § 42:5(D). School board public meetings have more stringent comment requirements under La. Rev. Stat. Ann. § 42:5.1, which requires the opportunity for public comment prior to taking any vote. Nevertheless, the statute states that the provisions of the Open Meeting Law “shall not prohibit the removal of any person or persons who willfully disrupt a meeting to the extent that orderly conduct of the meeting is seriously compromised.” La. Rev. Stat. Ann. § 42:6.1(c).

B. Must a commenter give notice of intentions to comment?

Only as may be specified by a public body's reasonable rules and regulations.

C. Can a public body limit comment?

Only as may be specified by a public body's reasonable rules and regulations and to prevent “willful disruption” that would “seriously compromise” the “orderly conduct” of a meeting.

D. How can a participant assert rights to comment?

In conformity with a public body's reasonable rules and regulations.

E. Are there sanctions for unapproved comment?

As noted above, the Open Meeting Law now provides for removal of persons who “willfully disrupt” a meeting and by doing so “seriously compromise” the orderly conduct of the meeting.

Statute

Open Records

Louisiana Revised Statutes

Title 44. Public Records and Recordors

Chapter 1. Public Records

Part I. Scope

§ 1. General definitions

A.(1) As used in this Chapter, the phrase “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, or 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.

(2)(a) All books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, 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 which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state, are “public records”, except as otherwise provided in this Chapter or the Constitution of Louisiana.

(b) Notwithstanding Subparagraph (a), any documentary material of a security feature of a public body's electronic data processing system, information technology system, telecommunications network, or electronic security system, including hardware or software security, password, or security procedure, process, configuration, software, and code is not a “public record”.

(3) As used in this Chapter, the word “custodian” means 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. Electrical well surveys produced from wells drilled in search of oil and gas located in established units and which are filed with the assistant secretary of the office of conservation shall be placed in the open files of the office of conservation. Any party or firm shall have the right to examine or reproduce, or both, at their own expense, copies of said survey, by photography or other means not injurious to said records. All other electric logs and other electronic surveys, other than seismic data, produced from wells drilled in search of oil and gas which are filed with the assistant secretary of the office of conservation shall remain confidential upon the request of the owner so filing for periods as follows:

For wells shallower than fifteen thousand feet a period of one year, plus one additional year when evidence is submitted to the assistant secretary of the office of conservation that the owner of the log has a leasehold interest in the general area in which the well was drilled and the log produced; for wells fifteen thousand feet deep or deeper, a period of two years, plus two additional years when evidence is submitted to the assistant secretary of the office of conservation that the owner of the log has such an interest in the general area in which the well was drilled and the log produced; and for wells drilled in the offshore area, subsequent to July 1, 1977, regardless of depth, a period of two years from the filing of the log with the office of conservation, plus two additional years where evidence is submitted to the assistant secretary of the office of conservation that the owner of the log has such an interest in the general area in which the well was drilled and the log produced and has immediate plans to develop the said general area, unless a shorter period of confidentiality is specifically provided in the existing lease.

At the expiration of time in which any log or electronic surveys, other than seismic data, shall be held as confidential by the assistant secretary of the office of conservation as provided for above, said log or logs shall be placed in the open files of the office of conservation and any party or firm shall have the right to examine or reproduce, or both, at their own expense, copies of said log or

electronic survey, other than seismic data, by photography or other means not injurious to said records.

§ 1.1. *Short title*

This Chapter shall be known and may be cited as the “Public Records Law”.

§ 2. *Records involved in legislative investigations*

Subject to the proviso set forth in Sub-section B of R.S. 44:3, the provisions of this Chapter shall not apply to any records, writings, accounts, letters, letter books, photographs or copies thereof, in the custody or control of any attorney or counsel whose duties or functions are performed by or under the authority of the legislature and which concern or hold relation to any case, cause, charge or investigation being conducted by or through the legislature, until after the case, cause, charge or investigation has been finally disposed of.

After final disposition, the records, writings, accounts, letters, letter books, photographs or copies thereof, are public records and subject to the provisions of this Chapter.

§ 3. *Records of prosecutive, investigative, and law enforcement agencies, and communications districts*

A. Nothing in this Chapter shall be construed to require disclosures of records, or the information contained therein, held by the offices of the attorney general, district attorneys, sheriffs, police departments, Department of Public Safety and Corrections, marshals, investigators, public health investigators, correctional agencies, communications districts, intelligence agencies, or publicly owned water districts of the state, which records are:

(1) Records pertaining to pending criminal litigation or any criminal litigation which can be reasonably anticipated, until such litigation has been finally adjudicated or otherwise settled, except as otherwise provided in Subsection F of this Section; or

(2) Records containing the identity of a confidential source of information or records which would tend to reveal the identity of a confidential source of information; or

(3) Records containing security procedures, investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments collected or obtained in the prevention of terrorist-related activity, including but not limited to physical security information, proprietary information, operational plans, and the analysis of such information, or internal security information; or

(4)(a) The records of the arrest of a person, other than the report of the officer or officers investigating a complaint, until a final judgment of conviction or the acceptance of a plea of guilty by a court of competent jurisdiction. However, the initial report of the officer or officers investigating a complaint, but not to apply to any followup or subsequent report or investigation, records of the booking of a person as provided in Louisiana Code of Criminal Procedure Article 228, records of the issuance of a summons or citation, and records of the filing of a bill of information shall be a public record.

(b) The initial report shall set forth:

(i) A narrative description of the alleged offense, including appropriate details thereof as determined by the law enforcement agency.

(ii) The name and identification of each person charged with or arrested for the alleged offense.

(iii) The time and date of the alleged offense.

(iv) The location of the alleged offense.

(v) The property involved.

(vi) The vehicles involved.

(vii) The names of investigating officers.

(c) Nothing herein shall be construed to require the disclosure of information which would reveal undercover or intelligence operations.

(d) Nothing herein shall be construed to require the disclosure of information which would reveal the identity of the victim of a sexual offense.

(5) Records containing the identity of an undercover police officer or records which would tend to reveal the identity of an undercover police officer;

or

(6) Records concerning status offenders as defined in the Code of Juvenile Procedure.

(7) Collected and maintained by the Louisiana Bureau of Criminal Identification and Information, provided that this exception shall not apply to the central registry of sex offenders maintained by the bureau.

B. All records, files, documents, and communications, and information contained therein, pertaining to or tending to impart the identity of any confidential source of information of any of the state officers, agencies, or departments mentioned in Paragraph A above, shall be privileged, and no court shall order the disclosure of same except on grounds of due process or constitutional law. No officer or employee of any of the officers, agencies, or departments mentioned in Paragraph A above shall disclose said privileged information or produce said privileged records, files, documents, or communications, except on a court order as provided above or with the written consent of the chief officer of the agency or department where he is employed or in which he holds office, and to this end said officer or employee shall be immune from contempt of court and from any and all other criminal penalties for compliance with this paragraph.

C. Whenever the same is necessary, judicial determination pertaining to compliance with this section or with constitutional law shall be made after a contradictory hearing as provided by law. An appeal by the state or an officer, agency, or department thereof shall be suspensive.

D. Nothing in this Section shall be construed to prevent any and all prosecutive, investigative, and law enforcement agencies and communications districts from having among themselves a free flow of information for the purpose of achieving coordinated and effective criminal justice.

E. Nothing in this Section shall be construed as forbidding the release of all or part of investigative files of fires classified as arson, incendiary, or suspicious unless, after consultation with the appropriate law enforcement agency, any sheriff, district attorney, or other law enforcement agency directs that the records not be disclosed because of pending or anticipated criminal adjudication.

F. Notwithstanding any other provision of law to the contrary, after a period of ten years has lapsed from the date of death of a person by other than natural causes, and upon approval by the district court having jurisdiction over any criminal prosecution which may result due to the death of such person, any prosecutive, investigative, and other law enforcement agency, or any other governmental agency in possession of investigative files or evidence or potential evidence, or any other record, document, or item relating to said death shall, upon request, provide copies of all such files, records, and documents to immediate family members of the victim and shall provide unlimited access for any and all purposes to all such evidence, potential evidence, and other items to any member of the immediate family and to any person or persons whom any member of the immediate family has designated for such purposes. The access granted shall include but not be limited to the examination, inspection, photographing, copying, testing, making impressions, and the use in any court proceeding of and conducting forensic studies on such evidence, potential evidence, and other items. For the purposes of this Subsection, the term “immediate family” shall mean the surviving spouse, children, grandchildren, and siblings of the victim.

G. Nothing in this Chapter shall be construed to require disclosures of certificates of official driving records in the custody and control of the Department of Public Safety and Corrections, office of motor vehicles, except as specifically provided for in R.S. 15:521.

H. Nothing in this Section shall be construed as prohibiting the release of any report resulting from a request for an investigation of an alleged violation of the crime of identity theft as defined under the provisions of R.S. 14:67.16 to the victim of such alleged crime. However, the information which shall be released to such victim shall be limited to that information required to be released under the provisions of R.S. 14:67.16(G)(2).

§ 3.1. *Certain records pertaining to terrorist-related activity*

Nothing in this Chapter shall be construed to require disclosure of records containing security procedures, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments created, collected, or obtained in the prevention of terrorist-related activity, including but not limited to physical security information, proprietary information, operational plans, and the analysis of such information, or internal security information.

§ 3.2. Proprietary and trade secret information

A. Nothing in this Chapter shall be construed to require the disclosure of proprietary or trade secret information pertaining to any code, pattern, formula, design, device, method, or process which is proprietary or trade secret information which has been submitted to a public body by the developer, owner, or manufacturer of a code, pattern, formula, design, device, method, or process in order to obtain or retain approval of such code, pattern, formula, design, device, method, or process for sale or use in this state.

B. Nothing in this Chapter shall be construed to require the disclosure of proprietary or trade secret information pertaining to any code, pattern, formula, design, device, method, or process which has been submitted to a public body in order to facilitate the further research, development, or commercialization of such code, pattern, formula, design, device, method, or process.

C.(1) All records containing proprietary or trade secret information submitted by a developer, owner, or manufacturer to a public body pursuant to Subsection A or B of this Section shall contain a cover sheet that provides in bold type "DOCUMENT CONTAINS CONFIDENTIAL PROPRIETARY OR TRADE SECRET INFORMATION". The developer, owner, or manufacturer shall clearly mark each instance of information which is, in his opinion, proprietary or trade secret information. However, the determination of whether such information is in fact proprietary or trade secret information shall be made by the custodian within thirty days of a submission; however, if a custodian receives a public records request during the period of thirty days, the determination shall be made within the time period provided in R.S. 44:32(D) and 33(B).

(2) A custodian who receives a request pursuant to this Chapter for any information which has been marked by the developer, owner, or manufacturer as proprietary or trade secret information shall, prior to the disclosure of the information, immediately notify such developer, owner, or manufacturer of the request and of the custodian's determination of whether or not the information so requested is subject to disclosure.

D. General information relating to the identity of the developer, owner, or manufacturer and any agreement or contract that such person or legal entity has entered into with the public body shall be subject to public review.

E. Nothing in this Section shall be construed in a manner as to prevent the public examination or reproduction of any record or part of a record which is not proprietary or trade secret information.

§ 4. Applicability

This Chapter shall not apply:

(1) To any tax return or the information contained in any tax return. However, the name and address of any person who obtains an occupational license, the information on the face of the license, and information as to whether an occupational license has been issued to a particular person shall be public records.

(2) To the name of any person or any other information from the records, papers or files of the state or its political subdivisions or agencies, concerning persons applying for or receiving old age assistance, aid to the blind, or aid to dependent children.

(3) To any records, writings, accounts, letters, letter books, photographs or copies thereof, in the custody or control of any officer, employee, agent or agency of the state whose duties and functions are to investigate, examine, manage in whole or in part, or liquidate the business of any private person, firm or corporation in this state, when the records, writings, accounts, letters, letter books, photographs or copies thereof, pertain to the business of the private person, firm or corporation, and are in their nature confidential.

(4)(a) To any records, writings, accounts, letters, letter books, photographs, reports of examination, work papers of examiners, including loan write-ups, line sheets, handwritten notes, loan classification documentation, and any other documentation relating to the financial statements of a financial institution's borrowers, or other entity supervised by the office of financial institutions, except as otherwise provided in R.S. 6:103, R.S. 9:3518.1, R.S. 37:1806, R.S. 51:1934, or R.S. 51:2389. This exception shall apply to any financial institution governed by Title 6, supervised entities licensed under Title 9 of the Louisiana Revised Statutes of 1950, and those entities licensed and supervised by the office of financial institutions pursuant to Title 37 or 51 of the Louisiana Revised Statutes of 1950, including those which are exercising the privileges granted by their charters or licenses, as well as those which have been determined to be insolvent or operating in an unsafe and unsound condition and

have lost their deposit insurance coverage, or, for other legal reasons have been closed and placed in conservatorship or receivership by the commissioner of financial institutions, or whose licenses issued under the provisions of Title 9, 37, or 51 have been terminated for any lawful reason.

(b) To copies of items exempted under Subparagraph (a) of this Paragraph in the custody or control of the office of financial institutions or any agent or employee of that agency, except as otherwise provided in R.S. 6:103, R.S. 9:3518.1, R.S. 37:1806, R.S. 51:1934, or R.S. 51:2389.

(c) To investigative records of the office of financial institutions which pertain to the application of any person for a charter or license for a new financial institution, and the confidential portion of any application by an entity chartered, licensed, and/or supervised by the office of financial institutions pursuant to Title 6, 9, 37, or 51 of the Louisiana Revised Statutes of 1950, except as otherwise provided in R.S. 6:103, R.S. 9:3518.1, R.S. 37:1806, R.S. 51:1934, or R.S. 51:2389.

(d) To records of the office of financial institutions which pertain to the application for a merger approval or an additional branch office for any existing financial institution governed by Titles 6 and 9 of the Louisiana Revised Statutes of 1950, except as otherwise provided in R.S. 6:103.

(5)(a) To any daily reports or endorsements filed by insurance companies doing business in this state with the commissioner of insurance in accordance with the laws of this state.

(b) All risk-based capital reports filed with the Department of Insurance pursuant to R.S. 22:611 through 620.

(6) To any records, writings, accounts, letters, letter books, photographs, or copies or memoranda thereof in the custody or control of the legislative auditor, or to the actual working papers of the internal auditor of a municipality until the audit is complete, unless otherwise provided.

(7) To any records, writings, accounts, letters, letter books, photographs or copies or memoranda thereof, and any report or reports concerning the fitness of any person to receive, or continue to hold, a license to practice medicine or midwifery, in the custody or control of the Louisiana State Board of Medical Examiners.

(8) To any records, data, writings, accounts, reports, letters, exhibits, pictures, photographs, drawings, charts, maps or copies or memoranda thereof, whether written or oral, filed by or received from any person by the commissioner of conservation, or any official or employee in the Department of Conservation, or which in any manner is in the custody or control of the commissioner of conservation, or any official or employee in the Department of Conservation, which pertain to or in any way involve estimated or proven recoverable reserves of oil, gas or other minerals in place, and the same has been declared, presented or received as confidential at the request of the lawful owner thereof; provided, however, statistical reports which do not reveal the identity of any owner or operator, either directly or by inference, may be released to the public by the commissioner of conservation.

(9) To any records, writings, accounts, letters, letter books, photographs or copies or memoranda thereof, and any report or reports concerning the fitness of any person to receive, or continue to hold, a license to practice as a registered nurse in the custody or control of the Louisiana State Board of Nursing; however, any action taken by the board, and any legal grounds upon which such action is based, relative to the fitness of any person to receive, or continue to hold, a license to practice as a registered nurse shall be a public record.

(10) To any records, data, writings, accounts, reports, letters, exhibits, pictures, photographs, drawings, charts, maps, or copies or memoranda thereof, whether written or oral, filed by or received from the Energy Information Administration of the United States Department of Energy by the secretary of the Department of Natural Resources or any official or employee in the Department of Natural Resources if nondisclosure to any other person or public body was a requirement for obtaining same and the information could not otherwise be obtained by law from that agency; and to any records or information filed with or received by the secretary of the Department of Natural Resources or any official or employee in the Department of Natural Resources from any person who is required by federal law to supply same to the state which information is not available to the public under federal law. Statistical reports which do not reveal, directly or by inference, the identity of the individual sources of the information compiled by the Department of Energy may be released to the public by the secretary of the Department of Natural Resources.

(11) To any records, writings, accounts, letters, exhibits, data, pictures, drawings, charts, photographs, or copies or memoranda thereof, and any report or reports concerning the fitness of any person to receive or continue to hold a

license to practice as a dentist or as a dental hygienist in the custody or control of the Louisiana State Board of Dentistry; however, any final determination made by the board, and any legal grounds upon which such action is based, relative to the fitness of any person to receive or continue to hold a license to practice as a dentist or as a dental hygienist shall be a public record.

(12) To any report, records, writings, accounts, letters, exhibits, data, pictures, drawings, charts, photographs, or copies or memoranda thereof, concerning the fitness of any person to receive or continue to hold a license to practice as a veterinarian in the custody or control of the Louisiana Board of Veterinary Medicine; however, any final determination made by the board, and any legal grounds upon which such action is based, relative to the fitness of any person to receive or continue to hold a license to practice as a veterinarian shall be a public record.

(13) To any of the following for use in the operation of or in connection with any automated broker interface system or any automated manifest system conducted by any deep water or shallow draft port commission of the state and licensed to, leased to, commissioned by, deposited with, or otherwise acquired by such port commission for such purpose:

(a) Any computer system or program including any computer software or related menus, flow charts, source materials, prompts, dialogues, data bases, manuals, and any other computer operating or support materials.

(b) Any financial or trade secrets or other third party proprietary information of any person, firm, corporation, agency, or other entity, whether governmental or private.

(14) To any records of the Department of Health and Human Resources, office of preventive and public health services, which records contain any technical information pertaining to any formula, method, or process which is a trade secret which has been submitted by any manufacturer of a product or mechanical sewage treatment plant in order to obtain or retain approval of such product for sale or use in this state or in order to assist said office in carrying out and enforcing the sanitary laws and regulations of the state.

(15) To any pending claims or pending claim files in the custody or control of the office of risk management, division of administration, or similar records in the custody of any municipality or parish; to any information concerning pending legal claims in the files of any attorney representing the state or any municipality in connection with the office of risk management, division of administration, or any office with similar responsibilities of any municipality or parish; or to any pending claims relating to loss reserves maintained or established by the office of risk management, division of administration, or any office with similar responsibilities of any municipality or parish, for any claims or for losses incurred but not reported; however, this Chapter shall be applicable to reserves as reported in the financial statement of the office of risk management, division of administration, or any municipality or parish. Nothing in this Paragraph shall be construed or interpreted in a manner as to prevent or inhibit in any manner the chairman and vice chairman of the Joint Legislative Committee on the Budget and the litigation subcommittee of the Joint Legislative Committee on the Budget from obtaining dollar amounts billed by and paid to contract attorneys and experts in defense of claims against the state that the chairman or vice chairman, or the subcommittee determines is necessary to perform functions and duties relative to the evaluation of performance or the determination of budget policy; however, no legislator or any committee of the legislature shall disclose any confidential information so obtained that would jeopardize or have a detrimental effect on the litigating position of the state.

(16) To the following records of a board or institution of higher learning, in accordance with rules and regulations promulgated by the Board of Trustees for State Colleges and Universities, the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, and the Board of Supervisors of Southern University and Agricultural and Mechanical College, or their successors, in conjunction with the Board of Regents, for programs and institutions under their supervision and management, unless access to the records is specifically required by state or federal statute or is ordered by a court under rules of discovery:

(a) Trade secrets and commercial or financial information obtained from a person, firm, or corporation, pertaining to research or to the commercialization of technology, including any such information designated as confidential by such person, firm, or corporation, but not including any such information relating to the identity of principals, officers, or individuals and entities directly or indirectly owning or controlling an entity other than a publicly held entity, or the identity of principals, officers, or individuals and entities directly owning or controlling five percent or more of a publicly held entity.

(b) Data, records, or information produced or collected by or for faculty or

staff of state institutions of higher learning in the conduct of or as a result of, study or research on commercial, scientific or technical subjects of a patentable or licensable nature, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, until such data, records, or information have been publicly released, published, or patented.

(c) Those portions of research proposals, supporting documentation and information, submitted by an institution of higher learning to the Board of Regents' Louisiana Education Quality Support Fund Program, which have been certified by the institution as containing data, information, ideas, or plans of a potentially patentable or licensable nature, including any discussions or written comments concerning such information by reviewers of the proposals, but not including reviewer ratings, until such data, records, or information have been publicly released, published, or patented.

(d) Those portions of private document collections donated to state institutions of higher learning for historical research or preservation purposes, which are designated by the donor to have restricted access for a specific period of time.

(17) To any records or information required of hospitals by the Department of Health and Hospitals as a condition of hospital licensure pursuant to R.S. 40:2104(B).

(18) To any records, writings, accounts, letters, letter books, photographs, or copies or memoranda thereof, and any report or reports concerning the fitness of any person to receive, or continue to hold, a license to practice chiropractic, in the custody or control of the Louisiana Board of Chiropractic Examiners. However, any final determination made by the board, and any legal grounds upon which such action is based, relative to the fitness of any person to receive or continue to hold a license to practice as a chiropractor shall be a public record.

(19) To any records or information defined as "confidential data" as provided in R.S. 40:3.1.

(20) To any records, notes, or maps within the Louisiana Department of Wildlife and Fisheries' Natural Heritage Program database on rare, threatened, or endangered species or unique natural communities.

(21) To any information received by the Department of Agriculture and Forestry as a result of questionnaires sent to private persons regarding the timber industry; however, the compiled results shall be public record. Notwithstanding the provisions of this Paragraph, the Department of Agriculture and Forestry shall provide any information which it receives as a result of such questionnaires to the Louisiana Tax Commission upon request of the commission.

(22) To any records or information defined as confidential under provisions of R.S. 40:2018(I).

(23) To the name and address of a law enforcement officer in the custody of the registrar of voters or the secretary of state, if certified by the law enforcement agency employing the officer that the officer is engaging in hazardous activities to the extent that it is necessary for his name and address to be kept confidential.

(24) To accident reports, and the information in accident reports, as provided in R.S. 32:398(H).

(25) To any information, documents, or records received by the Louisiana State Child Death Review Panel, or any local or regional panel established by the Louisiana State Child Death Review Panel defined as confidential under the provisions of R.S. 40:2019(F).

(26) To any records, writings, accounts, letters, exhibits, pictures, drawings, charts, photographs, or copies or memoranda thereof, in any reports of examinations or evaluations or any other information or data concerning the fitness of any person to receive, or continue to hold, a license or certificate to practice social work or clinical social work in the custody or control of the Louisiana State Board of Social Work Examiners. However, any final determination made by the board, and any legal grounds upon which such action is based, relative to the fitness of any person to receive or to continue to hold a license or certificate to practice social work shall be a public record.

(27)(a) To any testing instrument used or to be used by the state Department of Education or the State Board of Elementary and Secondary Education to assess the performance of individual students, nor to any answers for such tests or any individual student scores on such tests.

(b) Nothing in Subparagraph (a) of this Paragraph shall prohibit any person authorized by policies adopted by the state Department of Education or

the State Board of Elementary and Secondary Education from having access to the test instrument, test answers, or any individual student scores on such tests as necessary for the performance of his duties and responsibilities, nor any parent or guardian of a child who has taken any such test from having access to or being provided the child's individual test scores.

(28) To the name of any person, contained within or referred to in the records, papers or files of the Crime Victims Reparations Board, applying for or receiving funds from the Crime Victims Reparations Fund. In lieu of the person's name, the person's file number shall be utilized.

(29) To any records, writings, accounts, recordings, letters, exhibits, data, pictures, drawings, charts, photographs, or copies or memoranda thereof, and any report or reports concerning the fitness of any person to receive or continue to hold a license to practice as a psychologist in the custody or control of the Louisiana State Board of Examiners of Psychologists or to receive or continue to hold a license to practice as a medical psychologist in the custody or control of or the Louisiana State Board of Medical Examiners; however, any action taken by the board and any legal grounds upon which such action is based, relative to the fitness of any person to receive or continue to hold a license to practice as a psychologist shall be a public record, and statistical reports which do not reveal the identity of any licensed psychologist may be released to the public.

(30) To personal information of toll patrons of the Crescent City Connection and the Greater New Orleans Expressway. For the purposes of this Paragraph "personal information" means the address, telephone number, social security number, or financial account numbers of a toll patron who pays toll charges when such information is supplied by a toll patron to the Crescent City Connection Division or the Greater New Orleans Expressway Commission, and the date or time a toll patron has traversed the Crescent City Connection or the Greater New Orleans Expressway.

(31) To proprietary information provided to a communications district by a service provider, as defined in R.S. 33:9106(A)(4). "Proprietary information" as used in this Paragraph shall mean customer telephone numbers, information relating to the quantity, technical destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and information that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship.

(32) To any records, writings, accounts, recordings, letters, exhibits, data, pictures, drawings, charts, photographs, or copies of memoranda thereof, and any report concerning the fitness of any person to receive or continue to hold a license to practice as a practical nurse in the custody or control of the Louisiana State Board of Practical Nurse Examiners; however, any final determination made by the board, and any legal grounds upon which such action is based, relative to the fitness of any person to receive or continue to hold a license to practice as a practical nurse shall be a public record.

(33)(a) To the name, address, and telephone number of any student enrolled in any public elementary or secondary school in the state in a record of a public elementary or secondary school or a city or parish school board.

(b) Nothing in Subparagraph (a) of this Paragraph shall prohibit any official or employee of any public elementary or secondary school, the state Department of Education, or the State Board of Elementary and Secondary Education from having access to a student's name, address, and telephone number but only as necessary for the performance of his duties and responsibilities.

(34)(a) To the social security number of any teacher or school employee employed by a city, parish, or other local public school board or any nonpublic school.

(b) Nothing in Subparagraph (a) of this Paragraph shall prohibit any official or employee of any elementary or secondary school at which the teacher or school employee works, of the school board employing the teacher, of the state Department of Education, or of the State Board of Elementary and Secondary Education from having access to the social security number of a teacher or school employee but only as necessary for the performance of the duties and responsibilities of such official or employee.

(c) For the purposes of this Paragraph, "school board" shall include any city, parish, or other local public school board and the governing authority of any nonpublic school.

(35) To any records, writings, accounts, letters, exhibits, pictures, drawings, charts, or photographs, or copies or memoranda thereof, in any reports of examinations or evaluations or in any other information or data in the custody of the Louisiana Board of Pharmacy concerning the fitness of any person to receive, or continue to hold, a license, permit, certificate, or registration to

practice or assist in the practice of pharmacy. However, any final determination made by the board and any legal grounds upon which such action is based, relative to the fitness of any person to receive or continue to hold a license, permit, certificate, or registration to practice or assist in the practice of pharmacy shall be a public record.

(36) To terms and conditions of the rebate agreement, rebate amounts, percent of rebate, manufacturer's pricing, and supplemental rebates which are contained in records of the Department of Health and Hospitals and its agents with respect to supplemental rebate negotiations for prescription drug coverage by the Medicaid Program and which are prepared pursuant to a supplemental rebate agreement, provided that the total amount of supplemental rebates recouped by the department shall be a public record. Such information shall be considered proprietary and confidential, provided that such information shall be subject to review by the legislative auditor and the legislative fiscal officer.

(37) To any protected health information as defined in R.S. 29:762 pursuant to the Louisiana Public Health Emergency Act.

(38) To any records, data, writings, accounts, reports, letters, exhibits, pictures, photographs, drawings, charts, maps, e-mail, or copies or memoranda thereof, whether written or oral, in the custody of the office of conservation contained in pipeline security procedures developed to prevent potential terrorist-related threats or activities, including physical security information, proprietary information, vulnerability assessments, operational plans and analysis of such information, and internal security information. Nothing in this Paragraph shall prevent the office of conservation from transmitting information to the United States Department of Transportation as necessary for the performance of their duties and functions.

(39) To any records, writings, accounts, letters, letter books, photographs, or copies or memoranda thereof, and any report or reports concerning the fitness of any person to receive, or continue to hold, a license to practice optometry, in the custody or control of the Louisiana State Board of Optometry Examiners. However, any final determination made by the board after an adjudication hearing, other than by consent order, agreement, or other informal disposition shall be a public record.

(40) To any records, writings, plans, blueprints, or any information pertaining to security systems or features submitted to obtain an individual building permit on file in the office of a regulatory agency or official; any records, writings, plans, blueprints, or information submitted to obtain an individual building permit which details the interior layout of a residence to such an extent that access thereto would make such residence particularly vulnerable to burglary or other criminal activity; or any records, writings, plans, blueprints, or information containing any proprietary work product, design, or plan of any architect or engineer submitted to obtain an individual building permit; however, this Chapter shall be applicable to any survey or plot plan submitted solely for the purposes of displaying the outline of a building on a lot or lots of record in order to show compliance with yard or other setback requirements of a zoning ordinance or other such regulatory law.

(41) To the following information related to a credit card issued to a public body: the entire credit card number, the credit card expiration date, the pass-code or access code, the credit card personal identification number or "PIN", or any other information which could be used to make a charge to the credit card account or otherwise access the credit card account information; however, this Chapter shall apply to all other information regarding the credit card and credit card account.

(42) To any portion of a notarial examination administered or to be administered by the secretary of state, nor to any answers for such a notarial examination.

(43) To the information contained in an application of an applicant under the age of eighteen who is applying for membership on the Louisiana Legislative Youth Advisory Council, except as otherwise provided in R.S. 24:973.1(G).

(44) To any records, writings, accounts, letters, letter books, photographs, actual working papers, or copies thereof, any of which is in the custody or control of any officer, employee, or agent of the Louisiana Cemetery Board and which pertains to an investigation of the business of a cemetery authority that is under investigation; however any such record shall be public record and subject to the provisions of this Chapter when introduced as evidence before an administrative or other judicial tribunal or when the investigation is complete.

§ 4.1. Exceptions

A. The legislature recognizes that it is essential to the operation of a demo-

cratic government that the people be made aware of all exceptions, exemptions, and limitations to the laws pertaining to public records. 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.

B. The legislature further recognizes that there exist exceptions, exemptions, and limitations to the laws pertaining to public records throughout the revised statutes and codes of this state. Therefore, the following exceptions, exemptions, and limitations are hereby continued in effect by incorporation into this Chapter by citation:

- (1) R.S. 3:556.10, 558.10, 559.9, 750, 1401, 1413, 1430.7, 3204, 3221, 3370, 3421, 3524, 3706, 4021, 4110, 4162
- (2) R.S. 6:103, 122, 135, 1308
- (3) R.S. 9:172, 224, 313, 331.1, 395, 461, 1033, 3518.1, 3556, 3574.6, 3576.21
- (4) R.S. 11:174
- (5) R.S. 13:1905, 2593, 3715.3, 3715.4, 3734, 4687, 5108.1, 5304
- (6) R.S. 14:403, 403.1, 403.5
- (7) R.S. 15:242, 440.6, 477.2, 549, 570(F), 574.12, 578.1, 616, 660, 840.1, 1176, 1204.1, 1507, 1614
- (8) R.S. 17:7.2, 46, 47, 81.9, 334, 391.4, 500.2, 1175, 1202, 1237, 1252, 1952, 1989.7, 2047, 2048.31, 3099, 3136, 3390, 3773, 3884
- (9) R.S. 18:43, 44, 114, 116, 154, 1308, 1491.5, 1495.3, 1511.8
- (10) R.S. 22:2, 14, 42.1, 88, 244, 461, 572, 572.1, 574, 618, 706, 732, 752, 771, 1203, 1460, 1466, 1546, 1644, 1656, 1723, 1927, 1929, 1983, 1984, 2036, 2303
- (11) R.S. 23:1177, 1197, 1200.7, 1291, 1292, 1293, 1306, 1660, 1671
- (12) R.S. 24:513, 513.1, 513.3, 518
- (13) R.S. 26:921
- (14) R.S. 27:13, 21, 22, 25, 45, 61, 237
- (15) R.S. 28:56, 215.4
- (15.1) R.S. 29:765
- (16) R.S. 30:10.1, 209.1, 213, 215, 907, 908, 916, 2030, 2074, 2351, 2351.54, 2564
- (17) R.S. 32:398, 707.2, 1254
- (18) R.S. 33:1334, 2182, 2428, 4720.151, 4891, 9109, 9128, 9614
- (19) R.S. 34:340.21, 1005
- (20) R.S. 36:108
- (21) R.S. 37:74, 86, 90, 147, 691, 711.10, 763, 763.1, 781, 920.1, 969.1, 1277, 1278, 1285, 1326, 1518, 1745.15, 1747, 1806, 2156.1, 2406, 2505.1, 3481, 3507.1
- (22) R.S. 38:2212.1, 2220.3, 3053, 3104
- (23) R.S. 39:294, 1435
- (24) R.S. 40:3.1, 31.14, 31.27, 39.1, 41, 73, 526, 528, 1007, 1098.8, 1232.7, 1299.6, 1299.35.10, 1299.44, 1299.85, 1299.87, 1300.14, 1300.54, 1379.3, 2009.8, 2009.14, 2010.5, 2017.9, 2018, 2019, 2020, 2106, 2109.1, 2138, 2532, 2845.1
- (25) R.S. 42:17, 57, 1111, 1141, 1158, 1161
- (26) R.S. 44:19, 408, 425
- (27) R.S. 45:1313(C)
- (28) R.S. 46:56, 236.1.1 through 238, 284, 286.1, 439.1, 446.1, 1073, 1355, 1806, 1844, 1845, 1923, 2124.1, 2134, 2356, 2416, 2603, 2625, 2685
- (29) R.S. 47:15, 349, 633.6, 1508, 1515.3, 1516, 1837, 2130, 2327, 2605, 6036, 9006
- (30) R.S. 48:255.1
- (31) R.S. 49:220.25, 956, 997, 1055

(32) R.S. 51:710.2(B), 705, 706, 936, 1404, 1926, 1934, 2182, 2262, 2318, 2389

(33) R.S. 56:301.4, 306.5, 309.4, 637

(34) C.C.P. Art. 891, 1426

(35) C.Cr.P. Art. 103, 877, 894

(36) Ch.C. Arts. 328, 404, 412, 424.6, 424.9, 441, 543, 545, 615, 616, 616.1, 663, 888, 891, 893, 920, 1007, 1106, 1107, 1185, 1186, 1187, 1207, 1213, 1229, 1235, 1252, 1273, 1283.5, 1283.10, 1416, 1453, and 1568

C. The provisions of this Chapter shall not apply to any writings, records, or other accounts that reflect the mental impressions, conclusions, opinions, or theories of an attorney or an expert, obtained or prepared in anticipation of litigation or in preparation for trial.

§ 5. *Records in custody of governor*

A. This Chapter shall not apply to any records having been used, being in use, possessed, or retained for use by the governor in the usual course of the duties and business of his office relating to the deliberative process of the governor, intra-office communications of the governor and his internal staff, the governor's security and schedule, or communications with or the security and schedule of the governor's spouse or children.

B.(1) Except as otherwise provided in this Subsection, the provisions of this Section shall not apply to any agency, office, or department transferred or placed within the office of the governor.

(2) Notwithstanding Paragraph (1) of this Subsection, a record limited to pre-decisional advice and recommendations to the governor concerning budgeting in the custody of any agency or department headed by an unclassified gubernatorial appointee shall be privileged for six months from the date such record is prepared.

C. The provisions of this Section shall not prevent any person from examining and copying any records pertaining to any money or monies or any financial transactions in the control of or handled by or through the governor.

D. For purposes of this Section:

(1) "Deliberative process" means the process by which decisions and policies are formulated.

(2) "Internal staff of the governor" means the governor, chief of staff, executive counsel, director of policy, and employees under their supervision. Internal staff shall not mean any person employed in any other executive agency, including those designated by state law as housed in or transferred to the office of the governor.

(3) Records "relating to the deliberative process of the governor" means all forms of pre-decisional advice, opinions, deliberations, or recommendations made for the purpose of assisting the governor in the usual course of the duties and business of his office.

E. Notwithstanding any provision of this Chapter, the state police shall maintain a travel log identifying the date and location of all travel by the governor in a state police helicopter, which record shall be available for inspection and copying in accordance with the provisions of this Chapter. Entries to the state police helicopter travel log shall be made within seven days after the date of travel.

§ 6. *Completed reports of the Legislative Auditor*

The completed reports of audits of the Legislative Auditor shall be public records and shall be available at the office of the Legislative Auditor three days after the completion of the reports.

§ 7. *Hospital records*

A. Except as provided in Subsections B, C, and E of this Section and R.S. 44:17, the charts, records, reports, documents, and other memoranda prepared by physicians, surgeons, psychiatrists, nurses, and employees in the public hospitals of Louisiana, adult or juvenile correctional institutions, public mental health centers, and public schools for the mentally deficient to record or indicate the past or present condition, sickness or disease, physical or mental, of the patients treated in the hospitals are exempt from the provisions of this Chapter, except the provisions of R.S. 44:36 and 39. Nothing herein shall prevent hos-

pitals from providing necessary reports pursuant to R.S. 22:976, R.S. 29:765, R.S. 40:2019, and R.S. 44:17, nor shall any liability arise from the good faith compliance therewith.

B. The governing authority of each public hospital, adult or juvenile correctional institution, public mental health center or public state school for the mentally deficient, may make and enforce rules under which these charts, records, reports, documents or other memoranda may be exhibited, or copied by or for persons legitimately and properly interested in the disease, physical or mental, or in the condition of patients.

C. Whenever the past or present condition, sickness or disease, physical or mental, of any patient treated in any hospital, adult or juvenile correctional institution, center or school, set forth in Subsection A of this Section shall be at issue or relevant in any judicial proceeding, the charts, records, reports, documents and other memoranda referred to in said Subsection A shall be subject to discovery, subpoena and introduction into evidence in accordance with the general law of the state relating to discovery, subpoena and introduction into evidence of records and documents.

D. The records and proceedings (1) of any public hospital committee, medical organization committee, or extended care facility committee established under state or federal law or regulations or under the bylaws, rules, or regulations of such organization or institution or (2) of any hospital committee, medical organizational committee, or extended care facility committee established by a private hospital licensed under the provisions of R.S. 40:2100 et seq. shall be confidential and shall be used by such committee and the members thereof only in the exercise of the proper functions of the committee and shall not be public records and shall not be available for court subpoena. No physician; hospital, whether public or private; organization; or institution furnishing information, data, reports, or records to any such committee with respect to any patient examined or treated by such physician or confined in such hospital or institution shall, by reason of furnishing such information, be liable in damages to any person. No member of such a committee shall be liable in damages to any person for any action taken or recommendation made within the scope of the functions of such committee if such committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him. However, medicaid or medicare benefits or insurance benefits provided by a private insurer shall not be denied to any person due to inability to secure records or proceedings referred to in this Section. Nothing contained herein shall be construed to prevent disclosure of such data to appropriate state or federal regulatory agencies which by statute or regulation are otherwise entitled to access to such data.

E. The governing authority of each public hospital, adult or juvenile correctional institution, public mental health center, or public state school for the mentally deficient, shall make available for inspection and copying and shall release upon request an abstract of the patient's record in which all identifying data has been properly encoded to assure confidentiality relating to patients treated in such institutions to the Louisiana cancer registry program established pursuant to R.S. 40:1229.70 et seq.

F. All records of interviews, health surveys, questionnaires, laboratory and clinical data, reports, statements, notes, and memoranda, which contain identifying characteristics of research subjects, hereinafter referred to as "confidential data", and which are procured and prepared by employees of public universities, medical schools, and colleges for the purpose of research, and acting in accordance with institutional Internal Review Board policy and procedures for research involving human subjects, shall be exempt from the provisions of this Chapter and shall be subject to the following provisions:

(1) No part of the confidential data shall be available for subpoena nor shall it be disclosed, discoverable, or be compelled to be produced in any civil, criminal, administrative, or other proceeding, nor shall such records be deemed admissible as evidence in any civil, criminal, or administrative proceeding, or other tribunal or court for any reason.

(2) Nothing in this Section shall prohibit the publishing of data that does not identify individuals or groups which have been assured confidentiality of identification.

(3) Nothing in this Section shall prohibit the publication of results of the research that maintains the confidentiality of the identification of the individual or group that is the subject of research pursuant to this Section.

(4) Nothing in this Section shall prohibit the voluntary disclosure of identifying characteristics of research subjects provided the researcher obtains the consent of the individuals so identified prior to the release of the information.

§ 8. Louisiana office building corporation, special provisions

A. The private, nonprofit corporation known as the Louisiana Office Building Corporation, incorporated in the parish of East Baton Rouge on June 30, 1965, is hereby declared to be a quasi-public corporation. All papers, documents, contracts, legal agreements, correspondence, minutes of meetings and any other record whatsoever of said corporation are hereby declared to be matters of public record, and shall be open to inspection by state officials and employees, members of the Legislature and legislative staff personnel and the general public. The officers, members of the board of directors, agents and employees of said corporation are hereby authorized and directed to grant access to any record of said corporation upon request. The procedure for access to records under the authority of this Section shall be in keeping with the general provisions for access to public records contained in Chapter I of this Title.

B. All officers, directors and employees of the Louisiana Office Building Corporation who are also elected officials of the State of Louisiana shall be subject to the provisions of the code of ethics for state elected officials contained in R.S. 42:1141-1148 with reference to actions taken in their capacities as such officers, directors or employees of the said corporation. All other officers, directors and employees of the corporation shall be subject to the provisions of the code of ethics for state employees contained in R.S. 42:1111-1123 to the same extent as any state employees.

C. All books and records of the Louisiana Office Building Corporation shall be subject to audit and review by the Legislative Auditor to the same extent as all other state departments or agencies.

§ 9. Records of violations of municipal ordinances and of state statutes classified as a misdemeanor or felony

A.(1) Any person who has been arrested for the violation of a municipal or parish ordinance or for violation of a state statute which is classified as a misdemeanor may make a written motion to the district, parish, or city court in which the violation was prosecuted or to the district court located in the parish in which he was arrested, for expungement of the arrest record, under either of the following conditions:

(a) The time limitation for the institution of prosecution on the offense has expired, and no prosecution has been instituted; or

(b) If prosecution has been instituted, and such proceedings have been finally disposed of by dismissal, sustaining of a motion to quash, or acquittal.

(2) If the court finds that the mover is entitled to the relief sought as authorized by this Subsection, it shall order all agencies and law enforcement offices having any record of the arrest, whether on microfilm, computer card or tape, or on any other photographic, electronic, or mechanical method of storing data, to destroy any record of arrest, photograph, fingerprint, or any other information of any and all kinds or descriptions. The court shall order such custodians of records to file a sworn affidavit to the effect that the records have been destroyed and that no notations or references have been retained in the agency's central repository which will or might lead to the inference that any record ever was on file with any agency or law enforcement office. The original of this affidavit shall be kept by the court so ordering same and a copy shall be retained by the affiant agency which said copy shall not be a public record and shall not be open for public inspection but rather shall be kept under lock and key and maintained only for internal record keeping purposes to preserve the integrity of said agency's files and shall not be used for any investigative purpose. This Subsection does not apply to arrests for a first or second violation of any ordinance or statute making criminal the driving of a motor vehicle while under the influence of alcoholic beverages or narcotic drugs, as denounced by R.S. 14:98 or 98.1.

(3)(a) The Bureau of Criminal Identification and Information may charge a processing fee of two hundred fifty dollars for the expungement of any record of arrest when ordered to do so by the court in compliance with the provisions of this Section.

(b) The clerk of court shall collect the processing fee at the time the motion for expungement is filed and may collect a fee of up to ten dollars to cover the clerk's administration costs. If the court finds the mover is entitled to the relief sought, the clerk shall direct the collected processing fee to the Bureau of Criminal Identification and Information and the processing fee amount shall be deposited immediately upon receipt into the Criminal Identification and Information Fund. If the court does not grant such relief, the clerk of court shall return the fee to the moving party.

(c) Notwithstanding the provisions of Subparagraphs (a) and (b) of this Paragraph, a juvenile who has participated in and has successfully completed any juvenile drug court program operated by a court of this state shall be ex-

empt from payment of the processing fees otherwise authorized by this Paragraph.

(4) The sheriff and the district attorney may each charge a processing fee of fifty dollars for the expungement of any record of arrest when ordered to do so by the court in compliance with the provisions of this Section.

(5)(a) Any person who has been convicted for the violation of a municipal or parish ordinance, a traffic violation, or for violation of a state statute which is classified as a misdemeanor may make a written motion to the district, parish, or city court in which the violation was prosecuted or to the district court located in the parish in which he was arrested, for expungement of the arrest record if five or more years has elapsed between the date of the motion and the successful completion of any sentence, deferred adjudication, or period of probation or parole. Notwithstanding the provisions of Code of Criminal Procedure Article 892.1 or 894, or any other provision of law to the contrary regarding the set aside of a conviction or the dismissal of a prosecution, an expungement shall occur only once with respect to any person during a five-year period, except in the case of a misdemeanor offense of operating a vehicle while intoxicated which may occur only once with respect to any person during a ten-year period.

(b) No person shall be entitled to an expungement if the misdemeanor conviction arose from circumstances involving a sexual act or act of domestic violence.

(c) The motion for expungement shall include a certification obtained from the district attorney which verifies that, to his knowledge, the applicant has no felony convictions and no pending misdemeanor or felony charges under a bill of information or indictment.

(d) If, after a contradictory hearing with the district attorney and the arresting law enforcement agency, the court finds that the mover is entitled to the relief sought for the above reasons, it shall order all law enforcement agencies to expunge but not destroy the record of the same in accordance with the provisions of this Paragraph; however, nothing in this Paragraph shall limit or impede the authority under law to consider prior arrests or convictions in pursuing prosecution under multiple offender provisions or impede the investigation of any law enforcement official seeking to ascertain or confirm the qualifications of any person for any privilege or license authorized by law.

B.(1) Any person who has been arrested for the violation of a felony offense or who has been arrested for a violation of R.S. 14:34.2, R.S. 14:34.3, or R.S. 14:37 may make a written motion to the district court for the parish in which he was arrested for the expungement of the arrest record if:

(a) The district attorney declines to prosecute, or the prosecution has been instituted, and such proceedings have been finally disposed of by acquittal, dismissal, or sustaining a motion to quash; and

(b) The record of arrest and prosecution for the offense is without substantial probative value as a prior act for any subsequent prosecution.

(2) If, after a contradictory hearing with the district attorney and the arresting law enforcement agency, the court finds that the mover is entitled to the relief sought for the above reasons, it shall order all law enforcement agencies to expunge the record of the same in accordance herewith. However, nothing in this Paragraph shall limit or impede the authority under law to consider prior arrests or convictions in pursuing prosecution under multiple offender provisions or impede the investigation of any law enforcement official seeking to ascertain or confirm the qualifications of any person for any privilege or license authorized by law.

C.(1) Any person who has been arrested for the violation of a state statute which is classified as a felony may make a written motion to the district court for the parish in which he was arrested for expungement of the arrest record if the time limitation for the institution of prosecution on the offense has expired, and no prosecution has been instituted.

(2) If, after a contradictory hearing with the arresting agency, the court finds that the mover is entitled to the relief sought for any of the above reasons, it shall order all law enforcement agencies to expunge same* in accordance herewith. However, the arresting agency may preserve the name and address of the person arrested and the facts of the case for investigative purposes only.

D. Whoever violates any provisions of this section shall be punished by a fine of not more than two hundred fifty dollars or by imprisonment of not more than ninety days, or both, if the conviction is for a first violation; second and subsequent violations shall be punished by a fine of not more than five hundred dollars or imprisonment of six months, or both.

E.(1)(a) No court shall order the destruction of any record of the arrest and prosecution of any person convicted of a felony, including a conviction dismissed pursuant to Article 893 of the Code of Criminal Procedure.

(b) After a contradictory hearing with the district attorney and the arresting law enforcement agency, the court may order expungement of the record of a felony conviction dismissed pursuant to Article 893 of the Code of Criminal Procedure. Upon the entry of such an order of expungement, all rights which were lost or suspended by virtue of the conviction shall be restored to the person against whom the conviction has been entered, and such person shall be treated in all respects as not having been arrested or convicted unless otherwise provided in this Section or otherwise provided in the Code of Criminal Procedure Articles 893 and 894.

(2) No court shall order the expungement or destruction of any record of the arrest and prosecution of any person convicted of a sex offense as defined by R.S. 15:541(14.1), involving a child under the age of seventeen years. The provisions of this Paragraph shall apply to all records of any proceedings, order, judgment, or other action under Code of Criminal Procedure Article 893.

(3)(a) A court may order the destruction or the expungement of the record of a misdemeanor conviction dismissed pursuant to Article 894 of the Code of Criminal Procedure. However, no destruction of the record shall be ordered for any conviction for a first or second violation of any ordinance or statute making criminal the driving of a motor vehicle while under the influence of alcoholic beverages or narcotic drugs, as denounced by R.S. 14:98 or 98.1.

(b) Upon the entry of such an order of expungement, all rights which were lost or suspended by virtue of the conviction shall be restored to the person against whom the conviction has been entered, and such person shall be treated in all respects as not having been arrested or convicted unless otherwise provided in this Section or otherwise provided in the Code of Criminal Procedure Articles 893 and 894.

(4) However a criminal background check requested by a health care provider pursuant to R.S. 40:1300.51 et seq. shall include records which would inform a potential employer of any crimes enumerated in said statute which were committed by an applicant for employment.

F. For investigative purposes only, the Department of Public Safety and Corrections may maintain a confidential, nonpublic record of the arrest and disposition. Upon specific request therefor and on a confidential basis, the information contained in this record may be released to the following entities who shall maintain the confidentiality of such record: any law enforcement agency, criminal justice agency, the Louisiana State Board of Medical Examiners, the Louisiana State Board of Nursing, the Louisiana State Board of Dentistry, the Louisiana State Board of Examiners of Psychologists, the Louisiana State Board of Social Work Examiners, the Emergency Medical Services Certification Commission, Louisiana Attorney Disciplinary Board, Office of Disciplinary Counsel, the Louisiana Supreme Court Committee on Bar Admissions, or any person or entity requesting a record of all criminal arrests and convictions pursuant to R.S. 15:587.1.

G. "Expungement" means removal of a record from public access but does not mean destruction of the record. An expunged record is confidential, but remains available for use by law enforcement agencies, criminal justice agencies, the Louisiana State Board of Medical Examiners, the Louisiana State Board of Nursing, the Louisiana State Board of Dentistry, the Louisiana State Board of Examiners of Psychologists, the Louisiana State Board of Social Work Examiners, the Emergency Medical Services Certification Commission, the Louisiana Attorney Disciplinary Board, Office of Disciplinary Counsel, the Louisiana Supreme Court Committee on Bar Admissions, or any person or entity requesting a record of all criminal arrests and convictions pursuant to R.S. 15:587.1.

H. A convicted felon while in the custody of the secretary of the Department of Public Safety and Corrections shall have no right or standing to petition the court for expungement under this Section.

I. Except to those entities listed in Subsection G of this Section, no person whose record of arrest and conviction has been expunged pursuant to the provisions of this Section shall be required to disclose that he was arrested or convicted for the subject offense or that the record of the arrest and conviction has been expunged, unless otherwise provided in this Section.

J.(1) Any person who has obtained from the appropriate district court an order expunging an arrest may, with the consent of the district attorney, petition the same court alleging actual innocence for an order to destroy the records previously expunged.

(2) Such petition must be served on the arresting agency and the custodian of such records at least fifteen days in advance of any consideration by the

court.

(3) No such petition may be entertained by the court without the express written consent of the district attorney. Such consent may be withdrawn at any time prior to consideration by the court.

(4) Upon consideration of the petition to destroy records properly authorized by the district attorney, the court shall order all agencies and law enforcement offices having any record of the arrest, whether on microfilm, computer card or tape, or on any other photographic, electronic or mechanical method of storing data, to destroy any record of arrest, photograph, fingerprint, or any other information of any and all kinds or descriptions.

(5) Any such order may include a requirement that the custodian of records file a sworn affidavit attesting that the records have been destroyed and that no notations or references have been retained in the agency's or law enforcement office's central repository which will or might lead to the inference that any record ever was on file with any agency or law enforcement office. The original of this affidavit shall be kept by the court so ordering same, and a copy shall be retained by the affiant agency or law enforcement office which said copy shall not be a public record and shall not be open for public inspection but rather shall be kept under lock and key and maintained only for internal recordkeeping purposes to preserve the integrity of said agency's or law enforcement office's files and shall not be used for any investigative purpose.

K. The following applicants for expungement shall not be required to pay any fee to the clerk of court, the Bureau of Criminal Identification and Information, sheriff, the district attorney, or any other agency to obtain or execute an order of a court of competent jurisdiction to expunge the arrest from the individual's arrest record if a certification obtained from the district attorney is presented to the clerk of court which verifies that the applicant has no felony convictions and no pending felony charges under a bill of information or indictment and at least one of the following applies:

(1) The applicant was acquitted, after trial, of all charges derived from the arrest, including any lesser and included offense.

(2) The district attorney consents, and the case against the applicant was dismissed or the district attorney declined to prosecute the case prior to the time limitations prescribed in Chapter 1 of Title XVII of the Code of Criminal Procedure, and the applicant did not participate in a pretrial diversion program.

(3) The applicant was arrested and was never prosecuted within the time limitations prescribed in Chapter 1 of Title XVII of the Code of Criminal Procedure and did not participate in a pretrial diversion program.

L.(1) The Louisiana State Law Institute shall develop a uniform expungement form for persons seeking an expungement without the necessity of employing counsel.

(2) The Louisiana State Law Institute shall develop a uniform order of expungement. The order shall provide for any information deemed appropriate by the Louisiana State Law Institute including the following:

(a) The signatures of the judge, district attorney, and any other parties required by law.

(b) The statutory authority for granting or denying the expungement.

(c) A place for the court to provide written reasons when the expungement is denied.

(3) After development of the forms provided for by the provisions of this Subsection, the Louisiana State Law Institute shall make the forms available to the Judicial Council for distribution to the appropriate courts throughout the state of Louisiana.

(4) The clerks of court in all parishes shall make this information available to the public upon request.

§ 10. Confidential nature of documents and proceedings of judiciary commission

All documents filed with, and evidence and proceedings before the judiciary commission are confidential. The record filed by the commission with the supreme court and proceedings before the supreme court are not confidential.

§ 11. Confidential nature of certain personnel records

A. Notwithstanding anything contained in this Chapter or any other law to the contrary, the following items in the personnel records of a public employee

of any public body shall be confidential:

(1) The home telephone number of the public employee where such employee has chosen to have a private or unlisted home telephone number because of the nature of his occupation with such body.

(2) The home telephone number of the public employee where such employee has requested that the number be confidential.

(3) The home address of the public employee where such employee has requested that the address be confidential.

(4) The name and account number of any financial institution to which the public employee's wages or salary are directly deposited by an electronic direct deposit payroll system or other direct deposit payroll system.

B. The provisions of R.S. 44:11(A)(3) shall not apply to the personnel records of a city or parish school board to the extent that the home address of any employee of a city or parish school board shall be made available to recognized educational groups.

C. Notwithstanding any other provision of this Chapter, the social security number and financial institution direct deposit information as contained in the personnel records of a public employee of any public body shall be confidential. However, when the employee's social security number or financial institution direct deposit information is required to be disclosed pursuant to any other provision of law, including such purposes as child support enforcement, health insurance, and retirement reporting, the social security number or financial institution direct deposit information of the employee shall be disclosed pursuant to such provision of law.

D. Notwithstanding anything contained in this Chapter or any other law to the contrary, all medical records, claim forms, insurance applications, requests for the payment of benefits, and all other health records of public employees, public officials, and their dependents in the personnel records of any public body shall be confidential. However, nothing in this Chapter shall be intended to limit access to employee records under the Code of Civil Procedure or Code of Evidence.

§ 12. Medical records of persons covered by the Office of Group Benefits programs

A. 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.

B. All other records pertaining to such programs 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 a duly appointed representative of the Office of Group Benefits or a program of a political subdivision are subject to the provisions of this Chapter.

C. All books and records of the Office of Group Benefits shall be subject to audit and review by the legislative auditor to the same extent as all other state departments or agencies.

§ 12.1. Records of applicants for public positions; prohibitions

A. The name of each applicant for a public position of authority or a public position with policymaking duties, the qualifications of such an applicant related to such position, and any relevant employment history or experience of such an applicant shall be available for public inspection, examination, copying, or reproduction as provided in Part II of this Chapter.

B.(1) No public body or agent acting on behalf of such a public body shall utilize only oral contacts and interviews of applicants considered when filling vacancies in public positions of authority or public positions with policymaking duties or use any other means to circumvent the provisions of this Section.

(2)(a) Nothing in this Section shall prohibit oral contact prior to a person becoming an applicant or shall prohibit oral contact which may result in written documents.

(b) Nothing in this Paragraph shall require a particular method or procedure for filling vacancies as long as not exclusively by use of oral contact.

(3) Any person who violates the provisions of this Section shall be subject to all applicable penalties for violations of this Chapter.

§ 13. Registration records and other records of use maintained by libraries

A. Notwithstanding any provisions of this Chapter or any other law to the contrary, records of any library which is in whole or in part supported by public funds, including the records of public, academic, school, and special libraries, and the State Library of Louisiana, indicating which of its documents or other materials, regardless of format, have been loaned to or used by an identifiable individual or group of individuals may not be disclosed except to a parent or custodian of a minor child seeking access to that child's records, to persons acting within the scope of their duties in the administration of the library, to persons authorized in writing by the individual or group of individuals to inspect such records, or by order of a court of law.

B. Notwithstanding any provisions of this Chapter or any other law to the contrary, records of any such library which are maintained for purposes of registration or for determining eligibility for the use of library services may not be disclosed except as provided in Subsection A of this Section.

C. No provision of this Section shall be so construed as to prohibit or hinder any library or any business office operating jointly with a library from collecting overdue books, documents, films, or other items and/or materials owned or otherwise belonging to such library, nor shall any provision of this Section be so construed as to prohibit or hinder any such library or business office from collecting fines on such overdue books, documents, films, or other items and/or materials.

D. No provision of this Section shall be so construed as to prohibit or hinder any library or librarian from providing information to appropriate law enforcement officers investigating criminal activity in the library witnessed by an employee or patron of the library and reported by the administrative librarian to the appropriate law enforcement officials.

(1) The term "criminal activity in the library", as used in this Subsection, shall mean an activity which constitutes a crime, or otherwise constitutes an offense or violation of any law or ordinance, occurring:

- (a) Within any library building,
- (b) Upon any library property, or

(c) Near a library and the proximity of such activity to a library or library property constitutes an element of the offense.

(2) The term "information", as used in this Subsection shall include but not be limited to electronic data files, security surveillance video tapes, or other records or materials which may constitute evidence which would assist law enforcement officers in identifying the individual or group of individuals who may have committed criminal activity in the library.

§ 14. Insurance, health and accident; list of insured to be provided to department

A. Every person authorized to issue a hospital or medical expense policy, a hospital or medical service contract, an employee welfare benefit plan, a health and accident insurance policy, or any other insurance contract of this type in this state, including a group insurance plan, a self insurance plan, and the Louisiana State Employees Uniform Group Benefits Program, shall provide to the Department of Health and Hospitals information on their insureds, either in the form of a printed list, a computer printout, or electronic or data processing tapes, pursuant to rules and regulations established by the secretary, so that the department can determine if any of the insureds are persons who have received services from the department and on whose behalf the department may be entitled to receive insurance benefits. This information shall be provided monthly and once received by the department shall be confidential information in the same manner as other confidential information of the department.

B. The provisions of this Section shall not apply to any insured whose indemnity policy benefits pay less than twenty-five dollars a day in hospital or medical benefits.

§ 15. Medical records of persons applying for disability retirement through any state or statewide public retirement system or pension plan or fund

A. All medical records, application forms, doctor's reports and evaluations, agency certifications, and all other health records of persons applying for disability retirement from any state or statewide public retirement system or pension plan or fund pursuant to the provisions of the applicable laws governing disability retirement for these systems, plans, or funds, and all regulations promulgated pursuant thereto, which are in the custody or control of the board of trustees of any state or statewide public retirement system or pension plan or

fund or any duly appointed representative thereof, are exempt from the provisions of this Chapter.

B. All other records pertaining to membership in or retirement under any state or statewide public retirement system or pension plan or fund which are in the custody or control of the board of trustees of any state or statewide public retirement system or pension plan or fund or any duly appointed representative thereof, are subject to the provisions of this Chapter.

§ 16. Personal data records for certain members of public retirement systems, plans, or funds

A. All records of retired members of public retirement systems, plans, or funds or of members who are participating in or who have participated in the Deferred Retirement Option Plan are exempt from the provisions of this Chapter except for the amount of the retired member's retirement allowance, final average compensation, and years of creditable service, and the names of the agencies with which he was employed and the dates of such employment.

B. The exemption for records of retired members of the public retirement systems, plans, or funds or members who are participating in or who have participated in the Deferred Retirement Option Plan provided in Subsection A of this Section shall not apply to requests for such records by members of the Louisiana Legislature, by any state agency or employer reporting information to the public retirement systems, plans, or funds, or by any association of individuals receiving a retirement allowance or benefit from the public retirement systems, plans, or funds.

§ 17. Immunization records; definitions; disclosure; liability; procedures

A. Definitions

As used in this Section:

(1) "Minor" means a person who is seventeen years old or younger or who is not legally emancipated.

(2) "Patient" means a natural person who receives health care from a licensed health care provider under a contract, expressed or implied.

(3) "Private health care provider" means:

(a) A physician, surgeon, licensed registered or licensed practical nurse, and any employee of a physician or surgeon acting within the course and scope of employment and who is not providing health care services by or on behalf of the state.

(b) A resident, intern, or student of, or any person who is otherwise qualified in a discipline listed in Subparagraph (a) of this Paragraph when the person is acting within the course and scope of the training or staff appointment in and under the supervision of the health care providers listed in Subparagraph (a) of this Paragraph.

(4) "Representative of a patient" means a person who is a parent, tutor, curator, spouse, trustee, attorney, or other legal agent of the patient and who is authorized, by and on behalf of the patient, to exercise any of the patient's rights or privileges.

(5) "State health care provider" means a state health care provider as defined in R.S. 40:1299.39.

B. Information and records pertaining to the immunization status of persons against childhood diseases as required by R.S. 17:170 and R.S. 40:4(A) (2), may be disclosed and exchanged with verbal consent of the patient or his representative and without a patient's, or his representative's, written release authorizing such disclosure, to any of the following:

- (1) State health care provider.
- (2) Private health care provider.
- (3) Representative of a patient.
- (4) A patient who is not a minor.

C. If any person authorized in Subsection B discloses such information for any purpose other than for administering or receiving vaccinations, such disclosure shall be considered as an unauthorized release of confidential information, and such person shall be liable for civil damages.

D. The Department of Health and Hospitals shall promulgate rules and regulations, in accordance with the Administrative Procedure Act, to establish procedures whereby immunization information may be released from one health care provider to another.

§ 18. *Geophysical survey information*

All information and records of geophysical or geological surveys furnished to the State Mineral Board or the office of mineral resources pursuant to R.S. 30:213 shall be confidential and exempt from the provisions of this Chapter.

§ 19. *Autopsy photographs, video, and other visual images*

A.(1) Notwithstanding any provision of this Chapter to the contrary, any medical record or personal medical history of a deceased person in the custody of a coroner shall be confidential and shall not be subject to examination, inspection, or copying pursuant to R.S. 44:31, 32, or 33.

(2) For purposes of this Subsection, the phrase “medical record or personal medical history of a deceased person” shall mean information regarding the physical, mental, or behavioral health or condition of a deceased person prior to death.

(3) The provisions of Paragraph (1) of this Subsection shall not apply to a death certificate, final report of a coroner, or autopsy report.

B. Notwithstanding any other provision of law to the contrary, photographs, video, or other visual images, in whatever form, of or relating to an autopsy conducted under the authority of the office of the coroner shall be confidential, are deemed not to be public records, and shall not be released by the office of the coroner or any officer, employee, or agent thereof except as otherwise provided in this Section.

C. Nothing in this Section shall prevent the release of information in the custody of a coroner, including autopsy photographs, video, or other visual images, in whatever form, of or relating to an autopsy conducted under the authority of the office of the coroner as follows:

- (1) To a family member of the deceased or his designee.
- (2) To the succession representative of the deceased's estate or his designee.
- (3) To a law enforcement agency, for official use only.
- (4) To a qualified dentist, forensic anthropologist, or forensic pathologist as necessary to establish the identity of the deceased.
- (5) As directed by a court order or subpoena.

D. Nothing in this Section shall prevent the inspection of photographs, video, or other visual images, in whatever form, of or relating to an autopsy.

§ 20. *Records of discharge from armed forces*

A. Upon the presentation of the discharge certificate or other evidence, the clerks of court of the several parishes and the register of conveyances of the parish of Orleans shall record in their records without charge, each discharge certificate or other evidence of honorable separation from the armed forces of the United States of men and women who have served in the forces. It shall not be necessary to retain original discharge papers in the archives of the office.

B. Any discharge certificate or other evidence of honorable separation from the armed forces of the United States filed on or after July 1, 2000, shall be confidential, shall not be considered as public record under R.S. 44:1 et seq., and shall not be released or shown to any person except:

- (1) To the veteran or his designee.
- (2) If the veteran is deceased, to the executor of his estate or to the surviving spouse or any family member of the veteran, upon furnishing a death certificate, affidavit of death, or other satisfactory evidence of the death of the veteran.

C. Notwithstanding the provisions of R.S. 44:31 and R.S. 44:32, the clerks of court of the several parishes and the register of conveyances of the parish of Orleans shall make available to the public any discharge certificate or other evidence of honorable separation from the armed forces of the United States filed prior to July 1, 2000. The clerks of court and the register shall not make copies of such record for a person who requests such record, unless the person who requests such record appears in person in the office of the appropriate clerk of court or the register and provides his full name and address to the clerk or register. The clerks of court and the register shall not make such record available to the public on any website.

§ 21. *Municipal fire and police civil service; test materials confidential*

Notwithstanding any other provision of law to the contrary, all tests and all

records, the content of which includes or indicates actual content or answers for tests which are prepared, administered, or scored by the office of state examiner, municipal fire and police civil service, shall be confidential and shall not be released by any person except for:

(1) The production and exhibition by the state examiner of test questions, answers, and papers to a local civil service board as required by R.S. 33:2492 or 2552, provided that such production and exhibition and any discussion of such materials shall occur in executive session as authorized by R.S. 42:17.

(2) As necessary for the actual administration of the test.

§ 22. *Economic development negotiations*

A. Notwithstanding any other provision of this Chapter to the contrary, records in the custody of the Department of Economic Development pertaining to an active negotiation with a person for the purpose of retaining, expanding, or attracting economic or business development in the state shall be confidential and shall not be subject to the provisions of R.S. 44:31, 32, or 33, if the person requests such confidentiality in writing detailing the reasons such person requests confidentiality and asserting that the negotiation is conditioned in whole or in part on the maintenance of such confidentiality, and the secretary of the Department of Economic Development determines that the disclosure of such records would have a detrimental effect on the negotiation. Each determination by the secretary shall include his reasons for such determination. The secretary shall publish in the official journal of the state a notice containing general information regarding each negotiation to which records are confidential pursuant to this Section, no later than ten days after the determination of confidentiality. Such notice shall include the date of the secretary's determination. Records of expenses of the department pertaining to the negotiation shall be public and subject to review, except that the secretary may redact information that he determines would identify or lead to the identification of the person with whom the department is negotiating and such information shall be confidential until the negotiations are concluded. However, immediately upon the conclusion of the negotiation, all such records shall be subject to the provisions of this Chapter.

B. No information made confidential pursuant to Subsection A of this Section shall remain confidential for more than twelve months from the date of the secretary's determination of confidentiality; however, if the negotiation remains active and the secretary makes a new determination that the disclosure of the information would be detrimental to the negotiations and gives notice as provided in Subsection A of this Section, such information shall remain confidential while the negotiation remains active, not to exceed an additional twelve months. Under no circumstances shall information made confidential pursuant to this Section remain confidential for more than twenty-four months from the date of the initial determination of the secretary.

C. For the purposes of this Section, “active negotiation” or “negotiation remains active” shall mean a negotiation which has commenced when the Department of Economic Development provides a response to a request for information or other similar document from a person who is requesting assistance in the retention, expansion, or location of a business in this state and which is not concluded. For the purposes of this Section, a negotiation is no longer active or is concluded when the Department of Economic Development decides to no longer actively pursue the retention, expansion, or location of such business in this state; when the person with whom the department was negotiating decides not to pursue the retention, expansion, or location of such business in this state; or when a proposal affecting the negotiation is submitted to a public body for consideration by the public body in a public meeting, whichever occurs earlier.

D. The provisions of Subsection A of this Section shall not apply to any application for a license or permit or to any record of negotiations concerning any hazardous waste or waste site, as “hazardous waste” and “waste” are defined in R.S. 30:2173.

E. The provisions of this Section shall have no effect unless the party whose information is being maintained confidential maintains as confidential any information provided to the party by the Department of Economic Development in response to a request for assistance in the retention, expansion, or location of a business in the state and which is a negotiation and which remains an active negotiation.

F. The provisions of this Section shall be void and have no effect beginning with any negotiations that begin on or after July 1, 2012

§ 23. *Department of Transportation and Development; preconstruction estimates*

Notwithstanding the provisions of R.S. 44:31, 32, or 33, a preconstruction

estimate for a project advertised and let or for a project to be advertised and let by the Department of Transportation and Development shall not be available for examination, inspection, copying, or reproduction until the date that the bids for such project are opened. If the custodian of such a record receives a request for a preconstruction estimate prior to the date the bids for such project are opened, the custodian shall notify the requestor that the record is not available and shall specify the date that the record will be available. Notwithstanding the provisions of this Section, the estimated cost range for a department project shall be available, upon request.

§ 23. Department of Transportation and Development; Sabine River Authority; exception for certain sensitive security information or critical infrastructure information

A. Except as otherwise provided in Subsection B of this Section, nothing in this Chapter shall be construed to require disclosure of records of the Department of Transportation and Development or the Sabine River Authority, state of Louisiana, containing sensitive security information or critical infrastructure information.

B. The provisions of Subsection A of this Section shall not be construed, interpreted, or enforced in any manner to prohibit a member of the legislature in the performance of his official duties from inspecting or examining any record in the custody of the Department of Transportation and Development.

C. For purposes of this Section, the following terms shall have the following meanings:

(1) "Critical infrastructure" shall mean a transportation facility or asset that is so vital to the state of Louisiana that the incapacity or destruction of the facility or asset would have a debilitating impact on the security, economy, public health, or public safety of the state.

(2) "Sensitive security information" shall mean security procedures, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments created, collected, or obtained in the prevention of terrorist-related activity, including but not limited to physical security information or critical infrastructure information, proprietary information, operational plans, and the analysis of such information, or internal security information

Part II. General Provisions

§ 31. Right to examine records

A. Providing access to public records is a responsibility and duty of the appointive or elective office of a custodian and his employees.

B.(1) Except as otherwise provided in this Chapter or as otherwise specifically provided by law, and in accordance with the provisions of this Chapter, any person of the age of majority may inspect, copy, or reproduce any public record.

(2) Except as otherwise provided in this Chapter or as otherwise specifically provided by law, and in accordance with the provisions of this Chapter, any person may obtain a copy or reproduction of any public record.

(3) The burden of proving that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian

§ 31.1. Exceptions; authority of the custodian

For the purposes of this Chapter, person does not include an individual in custody after sentence following a felony conviction who has exhausted his appellate remedies when the request for public records is not limited to grounds upon which the individual could file for post-conviction relief under Code of Criminal Procedure Article 930.3. Notwithstanding the provisions contained in R.S. 44:32, the custodian may make an inquiry of any individual who applies for a public record to determine if such individual is in custody after sentence following a felony conviction who has exhausted his appellate remedies and the custodian may make any inquiry necessary to determine if the request of any such individual in custody for a felony conviction is limited to grounds upon which such individual may file for post-conviction relief under Code of Criminal Procedure Article 930.3.

§ 31.2. Public records awareness program

The attorney general shall establish a program for educating the general public, public bodies, and custodians regarding the provisions of this Chapter. Such program may include brochures, pamphlets, videos, seminars, and In-

ternet access to information which provides training on the provisions of this Chapter, including the custodian's responsibilities in connection with a request for records and the right of a person to institute court proceedings if access to a record is denied by the custodian.

§ 32. Duty to permit examination; prevention of alteration; payment for overtime; copies provided; fees

A. The custodian shall present any public record to any person of the age of majority who so requests. The custodian shall make no inquiry of any person who applies for a public record, except an inquiry as to the age and identification of the person and may require the person to sign a register and shall not review, examine or scrutinize any copy, photograph, or memoranda in the possession of any such person; and shall extend to the person all reasonable comfort and facility for the full exercise of the right granted by this Chapter; provided that nothing herein contained shall prevent the custodian from maintaining such vigilance as is required to prevent alteration of any record while it is being examined; and provided further, that examinations of records under the authority of this Section must be conducted during regular office or working hours, unless the custodian shall authorize examination of records in other than regular office or working hours. In this event the persons designated to represent the custodian during such examination shall be entitled to reasonable compensation to be paid to them by the public body having custody of such record, out of funds provided in advance by the person examining such record in other than regular office or working hours.

B. 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.

C.(1)(a) For all public records, except public records of state agencies, it shall be the duty of the custodian of such public records to provide copies to persons so requesting. The custodian may establish and collect reasonable fees for making copies of public records. Copies of records may be furnished without charge or at a reduced charge to indigent citizens of this state.

(b) For all public records in the custody of a clerk of court, the clerk may also establish reasonable uniform written procedures for the reproduction of any such public record. Additionally, in the parish of Orleans, the recorder of mortgages, the register of conveyances, and the custodian of notarial records may each establish reasonable uniform procedures for the reproduction of public records.

(c) The use or placement of mechanical reproduction, microphotographic reproduction, or any other such imaging, reproduction, or photocopying equipment within the offices of the clerk of court by any person described in R.S. 44:31 is prohibited unless ordered by a court of competent jurisdiction.

(d) Any person, as provided for in R.S. 44:31, may request a copy or reproduction of any public record and it shall be the duty of the custodian to provide such copy or reproduction to the person so requesting.

(2) For all public records of state agencies, it shall be the duty of the custodian of such records to provide copies to persons so requesting. Fees for such copies shall be charged according to the uniform fee schedule adopted by the commissioner of administration, as provided by R.S. 39:241.

Copies shall be provided at fees according to the schedule, except for copies of public records the fees for the reproduction of which are otherwise fixed by law. 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.

(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.

D. In any case in which a record is requested and a question is raised by the custodian of the record as to whether it is a public record, such custodian shall within three days, exclusive of Saturdays, Sundays, and legal public holidays, of the receipt of the request, in writing for such record, notify in writing the person making such request of his determination and the reasons therefor. Such written notification shall contain a reference to the basis under law which the custodian has determined exempts a record, or any part thereof, from inspection, copying, or reproduction.

§ 33. Availability of records

A.(1) When a request is made for a public record to which the public is entitled, the official, clerks of court and the custodian of notarial records in and for the parish of Orleans excepted, who has responsibility for the record shall have the record segregated from other records under his custody so that the public can reasonably view the record.

(2) If, however, segregating the record would be unreasonably burdensome or expensive, or if the record requested is maintained in a fashion that makes it readily identifiable and renders further segregation unnecessary, the official shall so state in writing and shall state the location of the requested record.

B.(1) If the public record applied for is immediately available, because of its not being in active use at the time of the application, the public record shall be immediately presented to the authorized person applying for it. If the public record applied for is not immediately available, because of its being in active use at the time of the application, the custodian shall promptly certify this in writing to the applicant, and in his certificate shall fix a day and hour within three days, exclusive of Saturdays, Sundays, and legal public holidays, for the exercise of the right granted by this Chapter.

(2) The fact that the public records are being audited shall in no case be construed as a reason or justification for a refusal to allow inspection of the records except when the public records are in active use by the auditor.

§ 34. Absence of records

If any public record applied for by any authorized person is not in the custody or control of the person to whom the application is made, such person shall promptly certify this in writing to the applicant, and shall in the certificate state in detail to the best of his knowledge and belief, the reason for the absence of the record from his custody or control, its location, what person then has custody of the record and the manner and method in which, and the exact time at which it was taken from his custody or control. He shall include in the certificate ample and detailed answers to inquiries of the applicant which may facilitate the exercise of the right granted by this Chapter.

§ 35. Enforcement

A. Any person who has been denied the right to inspect or copy a record under the provisions of this Chapter, either by a final determination of the custodian or by the passage of five days, exclusive of Saturdays, Sundays, and legal public holidays, from the date of his request without receiving a final determination in writing by the custodian, may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, together with attorney's fees, costs and damages as provided for by this Section, in the district court for the parish in which the office of the custodian is located.

B. In any suit filed under Subsection A above, the court has jurisdiction to enjoin the custodian from withholding records or to issue a writ of mandamus ordering the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the custodian to sustain his action. The court may view the documents in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

C. Any suit brought in any court of original jurisdiction to enforce the provisions of this Chapter shall be tried by preference and in a summary manner. Any appellate courts to which the suit is brought shall place it on its preferential docket and shall hear it without delay, rendering a decision as soon as practicable.

D. If a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he shall be awarded reasonable attorney's fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion thereof.

E.(1) If the court finds that the custodian arbitrarily or capriciously withheld the requested record or unreasonably or arbitrarily failed to respond to the request as required by R.S. 44:32, it may award the requester any actual damages proven by him to have resulted from the actions of the custodian except as hereinafter provided. In addition, if the court finds that the custodian unreasonably or arbitrarily failed to respond to the request as required by R.S. 44:32 it may award the requester civil penalties not to exceed one hundred dollars per day, exclusive of Saturdays, Sundays, and legal public holidays for each such day of such failure to give notification.

(2) The custodian shall be personally liable for the payment of any such damages, and shall be liable in solido with the public body for the payment of the requester's attorney fees and other costs of litigation, except where the custodian has withheld or denied production of the requested record or records on advice of the legal counsel representing the public body in which the office of such custodian is located, and in the event the custodian retains private legal counsel for his defense or for bringing suit against the requester in connection with the request for records, the court may award attorney fees to the custodian.

F. An award for attorney fees in any suit brought under the provisions of this Chapter shall not exceed the amounts approved by the attorney general for the employment of outside counsel.

§ 36. Preservation of records

A. All persons and public bodies having custody or control of any public record, other than conveyance, probate, mortgage, or other permanent records required by existing law to be kept for all time, shall exercise diligence and care in preserving the public record for the period or periods of time specified for such public records in formal records retention schedules developed and approved by the state archivist and director of the division of archives, records management, and history of the Department of State. However, in all instances in which a formal retention schedule has not been executed, such public records shall be preserved and maintained for a period of at least three years from the date on which the public record was made. However, where copies of an original record exist, the original alone shall be kept; when only duplicate copies of a record exist, only one copy of the duplicate copies shall be required to be kept. Where an appropriate form of the microphotographic process has been utilized to record, file, and otherwise preserve such public records with microforms produced in compliance with the provisions of R.S. 44:415, the microforms shall be deemed originals in themselves, as provided by R.S. 44:39(B), and disposition of original documents which have been microphotographically preserved and of duplicates and other copies thereof shall proceed as provided in R.S. 44:411.

B. All existing records or records hereafter accumulated by the Department of Revenue may be destroyed after five years from the thirty-first day of December of the year in which the tax to which the records pertain became due; provided that these records shall not be destroyed in any case where there is a contest relative to the payment of taxes or where a claim has been made for a refund or where litigation with reference thereto is pending.

C. All existing records or records hereafter accumulated by the various services of the state or its subdivisions which participate in federal programs or receive federal grants may be destroyed after three years from the date on which the records were made in those cases where this provision is not superseded by guidelines for the operative federal program or grant requiring longer retention periods for the records in question; provided that these records shall not be destroyed in any case where litigation with reference thereto is pending, or until the appropriate state or federal audits have been conducted.

D. All existing records or records hereafter accumulated by the Department of Public Safety and Corrections, corrections services, pertaining to any adult offender shall be retained and may not be destroyed until after six years from the date the full term sentence imposed upon such offender expires, or six years from the date of death of the offender, whichever occurs first.

E.(1) The public records of a prosecuting agency, pertaining to a criminal prosecution that results in a conviction, in a manner other than a plea, shall be retained for a period of three years from the date on which a court of appeal affirms the conviction, the Louisiana Supreme Court denies writs, or the Louisiana Supreme Court makes its final ruling on the appeal, whichever occurs last.

(2) The provisions of this Subsection shall not apply to any records exchanged as provided by law.

(3) Nothing in this Subsection shall be construed in any manner to affect or alter the provisions of R.S. 44:3 regarding the records of prosecuting agencies.

§ 37. Penalties for violation by custodians of records

Any person having custody or control of a public record, who violates any of the provisions of this Chapter, or any person not having such custody or control who by any conspiracy, understanding or cooperation with any other person hinders or attempts to hinder the inspection of any public records declared by this Chapter to be subject to inspection, shall upon first conviction be fined not less than one hundred dollars, and not more than one thousand

dollars, or shall be imprisoned for not less than one month, nor more than six months. Upon any subsequent conviction he shall be fined not less than two hundred fifty dollars, and not more than two thousand dollars, or imprisoned for not less than two months, nor more than six months, or both.

§ 38. *Access to records involved in legislative studies*

Notwithstanding any other law to the contrary, the custodian of records of the Department of Social Services, office of community services, and the custodian of records of each juvenile court or any court which hears and decides juvenile matters shall grant access to a percentage, as specified by the legislative committee, of the total records of defined classes of children in state custody or in foster care to any committee of the legislature acting pursuant to an appropriate legislative instrument directing the committee to study procedures or outcomes of cases involving children in state custody or in foster care. The size of the specific group to be studied shall be large enough to preserve the anonymity of individual children. Such access shall be limited to that purpose, and all information regarding names or other identifiers shall be removed. Information pertaining to children who have been adopted shall be strictly confidential and shall be released only in accordance with existing laws.

§ 39. *Microfilm and electronic digitized records; use as evidence*

A.(1) All persons and public bodies having custody or control of any public records of the state of Louisiana or any of its subdivisions may utilize any appropriate form of the microphotographic process, or an electronic digitizing process capable of reproducing an unalterable image of the original source document, for the recordation, filing, and preservation of all existing public records, forms, and documents or records, forms, and documents hereafter accumulated which pertain to their functions and operations in order to maintain efficient and economical records management programs and to conserve storage space, provided that the use of such microphotographic or electronic digitizing processes are not otherwise prohibited by law and that all microforms produced comply with standards established by the division of archives, records management, and history of the Department of State in accordance with the provisions of R.S. 44:415.

(2)(a) However, when electronic digitizing is utilized, the original source document or microfilm of such source document shall be maintained until such time as electronic digitizing is recognized as an acceptable means of records preservation.

(b) Notwithstanding the provisions of this Subsection, the agencies and entities set forth in this Subparagraph shall not be required to maintain the original source document or microfilm thereof when such document has been preserved utilizing electronic digitizing pursuant to written operating standards providing for retention and back-up schedules in accordance with recognized computer operating practices which at a minimum provide the technical equivalent of back-up copies:

(i) Public safety services within the Department of Public Safety and Corrections.

(ii) All public retirement systems, plans, and funds.

(iii) Any further exceptions to the provision to maintain original source documents or microfilm thereof under this Subsection must be approved in writing by the state archivist.

B. Any microfilm or electronically digitized copy, when satisfactorily identified, shall be deemed to be an original itself, and shall be admissible in evidence in all courts or administrative proceedings in any agency, whether the original document is in existence or not, and an enlargement or facsimile of a reproduction is likewise admissible in evidence, if the original reproduction is in existence and available for inspection under direction of the court or the administrative agency. Original records shall remain subject to subpoena.

§ 40. *Additional copies of records by microphotographic process; purchase of equipment; funds available for payment; copies of suit records*

A. The several clerks of court and ex officio recorders and registers of conveyances and recorders of mortgages, throughout the state, are hereby authorized at their option to make additional copies, by means of the microphotographic process, of all original acts and/or records thereof, including criminal records, of every nature and kind in their custody by virtue of their various official capacities as such clerks of court and ex officio records and registers of conveyances and recorders of mortgages, filed or recorded in their offices prior to July 29, 1964 and subsequent thereto.

B. Such clerks of court and ex officio recorders and registers are hereby authorized to purchase the necessary microphotographic equipment and equipment used to retrieve from storage microfilm copies, to lease such equipment or to contract with competent independent contractors, or both, according to the discretion of said clerks of court and ex officio recorders and registers, to cause the records described in this section to be copied and reproduced by means of the microphotographic process.

C. Each such clerk of court and ex officio recorder and register is hereby authorized to defray the cost of copying, reproducing and retrieving the records described in this section, including the cost of microphotographic and retrieval equipment and services, out of any funds available in the clerk's salary fund.

D. In the parish of Orleans the judges of the civil district court and the criminal district court, and in the remainder of the state the respective police juries or other governing authorities of the several parishes, are authorized to provide the necessary funds, when such funds are not already available, to enable said clerk of courts and ex officio recorders and registers to carry out the provisions of this section.

E. The several clerks of court, including the clerks of the Criminal or Civil District Courts for the parish of Orleans, shall make and retain in their custody, by means of the microphotographic process, a copy of all original criminal and civil records of every nature and kind, which are deemed permanent under a record retention and disposal schedule adopted by the secretary of state and the clerks of court in accordance with R.S. 44:410, and which have been in their custody for a period of five or more years. The clerks of court may then destroy the original criminal records and any other records, the destruction of which is authorized by R.S. 13:917, which have been so copied and retained. However, all records in suits affecting records relating to immovable property, or adoption, interdiction, successions, trusts, or emancipation, shall be retained in their original form, even though they have been copied as provided herein.

F. Five years after rendition of a final judgment from which no appeal may be taken, in any suit, except suits affecting records relating to immovable property, adoption, interdiction, successions, trusts or emancipation, the clerk of court, including the clerk of the Criminal or Civil District Court in the parish of Orleans, shall transfer at the direction of the state archivist all permanent records in the suit to the Department of State, as custodian of the official archives of the state, for safe and secure storage, service, restoration, and preservation. The state archivist shall establish a schedule by which all suit records heretofore accumulated by various clerks of court shall be transferred. The schedule shall include provisions for transfer from the parishes, in alphabetical order, of records from the years 1699 through 1921, to be completed by December 31, 1980, and for transfer, in the same order, of records from the years since 1921 in which the final judgment was rendered prior to September 8, 1973, to be completed by December 31, 1981. Upon receipt, the department shall make reproductions of the original records by the microphotographic process, retain a master negative thereof, and transmit to the sending clerk a copy of the reproductions of the records. The department shall maintain the confidentiality of any records, or parts thereof, which are so classified by law. Thereafter, notwithstanding the provisions of R.S. 44:421, the department shall not make or authenticate copies or reproductions of those records but, upon receipt of any request for service or of any inquiry relating to those records, the department shall forward the request or inquiry to the appropriate clerk of court, who may render the necessary services and charge the appropriate fees, as provided in R.S. 13:841 or 844, or in Orleans Parish by R.S. 13:1213 or 1381.

The provisions of this Subsection shall not apply to any records, the destruction of which is authorized by Subsection E of this section or by R.S. 13:917.

§ 41. *Receiving and filing map, plat, etc. for record*

A. After September 1, 1970, no clerk of court, recorder of mortgages or register of conveyances, or any other public authority shall receive and file for record any map, plat, or survey attached to and pertaining to the sale or mortgage of property, when such map, plat, or survey is required by either party, which does not have impressed thereon, and affixed thereto, the signature and seal or stamp of a professional land surveyor duly licensed in accordance with the provisions of Chapter 8 of Title 37 of the Louisiana Revised Statutes of 1950 by whom or under whose responsible charge said map, plat, survey, or other document was prepared.

B. Failure to comply with the provisions of this Section shall not invalidate any title to real property otherwise legally valid.

Open Meetings

Louisiana Revised Statutes

Title 42. Public Officers and Employees

Chapter 1-A. Open Meetings Law

§11 Short title.

This Chapter shall be known and may be cited as the “Open Meetings Law”.

§ 12 Public policy for open meetings; liberal construction

A. It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Toward this end, the provisions of this Chapter shall be construed liberally.

B. Further, to advance this policy, all public bodies shall post a copy of this Chapter.

§ 13 Definitions

A. For the purposes of this Chapter:

(1) “Meeting” means the convening of a quorum of a public body to deliberate or act on a matter over which the public body has supervision, control, jurisdiction, or advisory power. It shall also mean the convening of a quorum of a public body by the public body or by another public official to receive information regarding a matter over which the public body has supervision, control, jurisdiction, or advisory power.

(2) “Public body” means village, town, and city governing authorities; parish governing authorities; school boards and boards of levee and port commissioners; boards of publicly operated utilities; planning, zoning, and airport commissions; and any other state, parish, municipal, or special district boards, commissions, or authorities, and those of any political subdivision thereof, where such body possesses policy making, advisory, or administrative functions, including any committee or subcommittee of any of these bodies enumerated in this paragraph.

(3) “Quorum” means a simple majority of the total membership of a public body.

B. The provisions of this Chapter shall not apply to chance meetings or social gatherings of members of a public body at which there is no vote or other action taken, including formal or informal polling of the members.

§ 14 Meetings of public bodies to be open to the public

A. Every meeting of any public body shall be open to the public unless closed pursuant to R.S. 42:16, 17, or 18.

B. Each public body shall be prohibited from utilizing any manner of proxy voting procedure, secret balloting, or any other means to circumvent the intent of this Chapter.

C. All votes made by members of a public body shall be viva voce and shall be recorded in the minutes, journal, or other official, written proceedings of the body, which shall be a public document.

D. Except school boards, which shall be subject to R.S. 42:15, each public body conducting a meeting which is subject to the notice requirements of R.S. 42:19(A) shall allow a public comment period at any point in the meeting prior to action on an agenda item upon which a vote is to be taken. The governing body may adopt reasonable rules and restrictions regarding such comment period.

§ 15 School board meetings; public comment

A. Notwithstanding any other law to the contrary, each school board subject to the provisions of this Chapter, except as provided in Subsection B of this Section, shall allow public comment at any meeting of the school board prior to taking any vote. The comment period shall be for each agenda item and shall precede each agenda item.

B. A school board in a parish containing a municipality with a population of four hundred thousand or more according to the latest federal decennial census, at any meeting of the school board, shall provide an opportunity for public comment subject to reasonable rules, regulations, and restrictions as adopted by the school board.

C. For purposes of this Section, a comment period for all comments at the beginning of a meeting shall not suffice to meet the requirements of Subsection A or Subsection B of this Section.

§16 Executive Sessions

A public body may hold executive sessions upon an affirmative vote, taken at an open meeting for which notice has been given pursuant to R.S. 42:19, of two-thirds of its constituent members present. An executive session shall be limited to matters allowed to be exempted from discussion at open meetings by R.S. 42:17; however, no final or binding action shall be taken during an executive session. The vote of each member on the question of holding such an executive session and the reason for holding such an executive session shall be recorded and entered into the minutes of the meeting. Nothing in this Section or R.S. 42:17 shall be construed to require that any meeting be closed to the public, nor shall any executive session be used as a subterfuge to defeat the purposes of this Chapter.

§17. Exceptions to open meetings

A. A public body may hold an executive session pursuant to R.S. 42:16 for one or more of the following reasons:

(1) Discussion of the character, professional competence, or physical or mental health of a person, provided that such person is notified in writing at least twenty-four hours before the meeting and that such person may require that such discussion be held at an open meeting, and provided that nothing in this Subsection shall permit an executive session for discussion of the appointment of a person to a public body. In cases of extraordinary emergency, written notice to such person shall not be required; however, the public body shall give such notice as it deems appropriate and circumstances permit.

(2) Strategy sessions or negotiations with respect to collective bargaining, prospective litigation after formal written demand, or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public body.

(3) Discussion regarding the report, development, or course of action regarding security personnel, plans, or devices.

(4) Investigative proceedings regarding allegations of misconduct.

(5) Cases of extraordinary emergency, which shall be limited to natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude.

(6) Any meeting of the State Mineral and Energy Board at which records or matters entitled to confidential status by existing law are required to be considered or discussed by the board with its staff or with any employee or other individual, firm, or corporation to whom such records or matters are confidential in their nature, and are disclosed to and accepted by the board subject to such privilege, for the exclusive use in evaluating lease bids or development covering state-owned lands and water bottoms, which exception is proved pursuant to and consistently with the Public Records Act, being Chapter 1 of Title 44 of the Louisiana Revised Statutes of 1950, as amended, and other statutes to which the board is subject.

(7) Discussions between a city or parish school board and individual students or the parents or tutors of such students, or both, who are within the jurisdiction of the respective school system, regarding problems of such students or their parents or tutors; provided however that any such parent, tutor, or student may require that such discussions be held in an open meeting.

(8) Presentations and discussions at meetings of civil service boards of test questions, answers, and papers produced and exhibited by the office of the state examiner, municipal fire and police civil service, pursuant to R.S. 33:2492 or 2552.

(9) The portion of any meeting of the Second Injury Board during which records or matters regarding the settlement of a workers' compensation claim are required to be considered or discussed by the board with its staff in order to grant prior written approval as required by R.S. 23:1378(A)(8).

(10) Or any other matters now provided for or as may be provided for by the legislature.

B. The provisions of this Chapter shall not apply to judicial proceedings.

C. The provisions of this Chapter shall not prohibit the removal of any person or persons who willfully disrupt a meeting to the extent that orderly conduct of the meeting is seriously compromised.

D. The provisions of R.S. 42:19 and R.S. 42:20 shall not apply to any meeting of a private citizens' advisory group or a private citizens' advisory committee established by a public body, when the members of such group or committee do not receive any compensation and serve only in an advisory capacity, except textbook advisory committees of the State Department of Education or the Board of Elementary and Secondary Education. However, all other provisions contained in this Chapter shall be applicable to such group or committee and the public body which established such group or committee shall comply with the provisions of R.S. 42:19 in providing the required notice of meetings of such group or committee.

§18 Executive or closed meetings of legislative houses and committees

A. Notwithstanding any contrary provision of R.S. 42:16 and 17, executive or closed meetings may be held by the legislature, either house thereof, or any committee or subcommittee of either house, upon the affirmative vote of at least a majority of the members of the house or the committee or subcommittee thereof making the determination to hold such meeting, for one or more of the following purposes:

(1) Discussion of confidential communications.

(2) Discussion of the character, professional competence, or physical or mental health of any person subject to contract with or to employment, election, or appointment or confirmation of appointment by either house of the legislature or any committee or subcommittee of either or by any other public body.

(3) Strategy sessions or negotiations with respect to collective bargaining, prospective litigation after formal written demand, or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the legislature, either house thereof, or any committee or subcommittee of either house.

(4) Discussion regarding a report, development, or course of action regarding security personnel, plans, or devices.

(5) Investigations by the legislature, either house thereof, or by any committee or subcommittee thereof, including the Legislative Audit Advisory Council or any other joint or statutory committee, whenever reasonable grounds exist to believe that the testimony to be elicited will reflect a failure of compliance with law.

(6) Cases of extraordinary emergency, which shall be limited to natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude.

(7) Discussion by either house of the legislature, or any committee or subcommittee thereof, of any matter affecting the internal operations or management of the body.

(8) Any other matters provided by law or pursuant to the joint rules of the legislature.

B. All procedural matters pertaining to the necessity, purposes, or reasons for the holding of executive or closed meetings under the provisions of this Section shall be in accordance with such rules as are adopted by each of the houses of the legislature for the purpose.

C. The provisions of this Chapter shall not apply to chance meetings, social gatherings, or other gatherings at which only presentations are made to members of the legislature or members of either house thereof or of any committee or subcommittee if no vote or other action, including formal or informal polling of members, is taken.

§19. Notice of meetings

A.(1)(a) All public bodies, except the legislature and its committees and subcommittees, shall give written public notice of their regular meetings, if established by law, resolution, or ordinance, at the beginning of each calendar year. Such notice shall include the dates, times, and places of such meetings.

(b)(i) All public bodies, except the legislature and its committees and subcommittees, shall give written public notice of any regular, special, or rescheduled meeting no later than twenty-four hours before the meeting.

(ii) Such notice shall include the agenda, date, time, and place of the meeting, provided that upon unanimous approval of the members present at a meeting of a public body, the public body may take up a matter not on the agenda. Any such matter shall be identified in the motion to take up the matter not on the agenda with reasonable specificity, including the purpose for the addition to the agenda, and entered into the minutes of the meeting. Prior to any vote on the motion to take up a matter not on the agenda by the public body, there shall be an opportunity for public comment on any such motion in accordance with R.S. 42:14 or 15. The public body shall not use its authority to take up a matter not on the agenda as a subterfuge to defeat the purposes of this Chapter.

(iii) Following the above information there shall also be attached to the written public notice of the meeting, whether or not such matters will be discussed in an executive session held pursuant to R.S. 42:17(A)(2):

(aa) A statement identifying the court, case number, and the parties relative to any pending litigation to be considered at the meeting.

(bb) A statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation for which formal written demand has been made that is to be considered at the meeting.

(iv) In cases of extraordinary emergency, such notice shall not be required; however, the public body shall give such notice of the meeting as it deems appropriate and circumstances permit.

(2) Written public notice given by all public bodies, except the legislature and its committees and subcommittees, shall include, but need not be limited to:

(a) Posting a copy of the notice at the principal office of the public body holding the meeting, or if no such office exists, at the building in which the meeting is to be held; or by publication of the notice in an official journal of the public body no less than twenty-four hours before the meeting.

(b) Mailing a copy of the notice to any member of the news media who requests notice of such meetings; any such member of the news media shall be given notice of all meetings in the same manner as is given to members of the public body.

B. Reasonable public notice of day to day sessions of either house of the legislature, and of all matters pertaining to such meetings, including but not necessarily restricted to the content of notices, quorums for the transaction of business, proxy voting, viva-voce votes, and recordation of votes, shall be governed by the provisions of the Louisiana Constitution, the rules of procedure of the Senate and the House of Representatives, and the Joint Rules applicable to both houses. Reasonable public notice of meetings of legislative committees and subcommittees shall be given in accordance with such rules as are adopted by the respective houses for the purpose.

§ 20 Written minutes

A. All public bodies shall keep written minutes of all of their open meetings. The minutes to be kept by the legislature and legislative committees and subcommittees shall be governed by the provisions of R.S. 42:21. The minutes of all other public bodies shall include but need not be limited to:

(1) The date, time, and place of the meeting.

(2) The members of the public body recorded as either present or absent.

(3) The substance of all matters decided, and, at the request of any member, a record, by individual member, of any votes taken.

(4) Any other information that the public body requests be included or reflected in the minutes.

B. The minutes shall be public records and shall be available within a reasonable time after the meeting, except where such disclosures would be inconsistent with R.S. 42:16, 17, and 18, or rules adopted under the provisions of R.S. 42:21.

§21 Minutes of legislative sessions, legislative committees and subcommittees

A. The journals of the proceedings of each of the houses of the legislature, as required to be kept by the provisions of Article III, Section 10(B) of the Louisiana Constitution, shall constitute the written minutes of open sessions of the Senate and of the House of Representatives.

B. The written minutes of standing, interim, joint, and other committees and subcommittees of the Senate and House of Representatives shall include such information as may be required by the rules of the respective houses.

§22 Presentation and consideration of offer to sell natural gas to a public body, or to operate or acquire ownership of, a gas utility owned or operated by a public body

A. For the purposes of this Section, “gas utility” means any revenue producing business or organization which is owned or operated by a public body, and which regularly supplies the public with natural gas at retail.

B. Prior to consideration or action by a public body to accept a proposal by a nonpublic entity to sell natural gas to a public body for use in its gas distribution system sales to retail customers for a term exceeding twelve months including rollovers or extensions, or to assume operation or acquire ownership of, a gas utility being operated or owned by the public body, the proposal shall:

- (1) Be introduced, in writing, at an open meeting of the public body.
- (2) Not be considered by the public body until notice of the proposal has been published in the official journal of the public body and at least thirty days has lapsed after the introduction of the proposal.

(3) Include a written report of the most recent five-year history of the sale of natural gas to similar public bodies for use in gas distribution system sales to retail customers for a term exceeding twelve months including rollovers or extensions by the nonpublic entity if the entity is seeking to sell natural gas to a public body for use in its gas distribution system sales to retail customers for a term exceeding twelve months including rollovers or extensions to the public body or a five-year history of the purchase price of other gas utilities operated or owned by a public body paid by the nonpublic entity if the entity is seeking to assume operation or acquire ownership of the utility. A copy of the report shall be provided to all members of the public body and be available to the public.

(4) Include any written contract or agreement proposed between the nonpublic entity seeking to sell natural gas to a public body for use in its gas distribution system sales to retail customers for a term exceeding twelve months including rollovers or extensions to, or assume operation or acquire ownership of, the gas utility and the public body. A copy of the contract or agreement shall be provided to all members of the public body and be available to the public.

C. Notice of the proposal and the availability of the written report and contract or agreement shall be published once in the official journal of the public body. The notice shall indicate the time and place where the public body will hold a public hearing and consider the proposal.

D. No proposal shall be considered until a public hearing on it has been held. No proposal can be adopted at the meeting at which it is introduced.

E. Any proposed revision or amendment of the published contract or agreement shall be noticed, published, and made available in its entirety in the same manner as required for the original contract or agreement. No such contract or agreement shall be entered into by the public body until at least thirty days have lapsed since the notice of the availability of the revised contract or agreement has been published.

§ 23 Sonic and video recordings; live broadcast

A. All or any part of the proceedings in a public meeting may be video or tape recorded, filmed, or broadcast live.

B. A public body shall establish standards for the use of lighting, recording or broadcasting equipment to insure proper decorum in a public meeting

§ 24 Voidability

Any action taken in violation of this Chapter shall be voidable by a court of competent jurisdiction. A suit to void any action must be commenced within sixty days of the action.

§ 25 Enforcement

A. The attorney general shall enforce the provisions of this Chapter throughout the state. He may institute enforcement proceedings on his own initiative and shall institute such proceedings upon a complaint filed with him by any person, unless written reasons are given as to why the suit should not be filed.

B. Each district attorney shall enforce the provisions of this Chapter throughout the judicial district within which he serves. He may institute enforcement proceedings on his own initiative and shall institute such proceedings upon a complaint filed with him by any person, unless written reasons are given as to why the suit should not be filed.

C. Any person who has been denied any right conferred by the provisions of this Chapter or who has reason to believe that the provisions of this Chapter have been violated may institute enforcement proceedings.

§ 26 Remedies; jurisdiction; authority; attorney fees

A. In any enforcement proceeding the plaintiff may seek and the court may grant any or all of the following forms of relief:

- (1) A writ of mandamus.
- (2) Injunctive relief.
- (3) Declaratory judgment.
- (4) Judgment rendering the action void as provided in R.S. 42:24.
- (5) Judgment awarding civil penalties as provided in R.S. 42:28.

B. In any enforcement proceeding the court has jurisdiction and authority to issue all necessary orders to require compliance with, or to prevent non-compliance with, or to declare the rights of parties under the provisions of this Chapter. Any noncompliance with the orders of the court may be punished as contempt of court.

C. If a person who brings an enforcement proceeding prevails, he shall be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may award him reasonable attorney fees or an appropriate portion thereof. If the court finds that the proceeding was of a frivolous nature and was brought with no substantial justification, it may award reasonable attorney fees to the prevailing party.

§ 27 Venue; summary proceedings

A. Enforcement proceedings shall be instituted in the district court for the parish in which the meeting took place or will take place.

B. Enforcement proceedings shall be tried by preference and in a summary manner. Any appellate court to which the proceeding is brought shall place it on its preferential docket, shall hear it without delay, and shall render a decision as soon as practicable.

§28. Civil penalties

Any member of a public body who knowingly and wilfully participates in a meeting conducted in violation of this Chapter, shall be subject to a civil penalty not to exceed one hundred dollars per violation. The member shall be personally liable for the payment of such penalty. A suit to collect such penalty must be instituted within sixty days of the violation.

