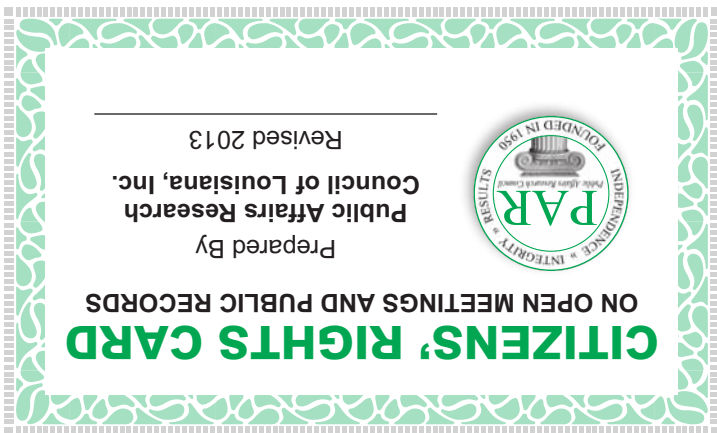


- These minutes are public records.
- Each member's votes.
- Further, at the request of any member, the record shall identify and a list of those present.
- This list must include the date, time and place of the meeting showing the substance of all matters decided.
- Public bodies must keep written minutes of open meetings as well as all committees and subcommittees.
- Includes city and parish governing bodies; school, public utility and leave boards; port commissions; planning, zoning and airport commissions; other state, local and special district boards with policy making authority; advisory or administrative functions; as well as all committees and subcommittees.
- Open Meetings Laws do not apply to judicial proceedings, but many courtrooms are open to the public.
- Citizens have the right to attend the deliberations of public bodies on the city, state and parish level.
- All votes in meetings must be "viva voce" (by voice vote), and recorded in the minutes.
- The Open Meetings Law ensures "that public business" is performed "in an open and public manner"
- Citizens generally have the right to enjoy and use public property, such as streets, parks and sidewalks.
- The U.S. Supreme Court has declared that so-called "traditional" public forums, such as streets and parks, can only be regulated if the government provides a content-neutral time, place and manner restriction.
- This restriction must provide the speaker a similar alternative place to communicate.
- Absent a valid time, place and manner restriction, a citizen's right to protest on public property may only be limited if the government shows some compelling government interest.
- A compelling government interest might include a criminal violation or risk of injury.
- In no case can the government ever favor one viewpoint over another.
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- This list must include the date, time and place of the meeting and a list of those present.
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- These minutes are public records.

**CITIZENS' RIGHTS UNDER THE LOUISIANA OPEN MEETINGS LAW (R.S. 42:11-28)**



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This card explains your rights and responsibilities under Louisiana's open meetings and public records laws. The Louisiana Constitution states that "No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law." (Article XII, Section 3)

**Exception to the Public Meetings Law: Executive Session**

- Requires 2/3 vote of members present.
- The Board's minutes must reflect a reason for holding an Executive Session, which include:
  - The character, professional competence or health of a person.
    - The person must be given 24 hours notice except in an emergency.
    - This cannot be used to discuss an appointment to the public board or body.
  - Discuss strategy or negotiations regarding collective bargaining or prospective litigation.
    - Prospective litigation may only be discussed after formal written demand.
      - Formal written demand occurs, usually in letter form, before a petition is filed.
      - Ongoing litigation may be discussed when "an open meeting would have a detrimental effect on the bargaining or litigation position of the public body." The agenda must identify what litigation is discussed.
  - Discussion of security personnel, plans or devices.
  - Investigations of alleged misconduct.
  - To deal with "natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions or other matters of similar magnitude." (For additional detail, see LSA-R.S.42:17.)
  - As of 2011, a board may not discuss the awarding of a public contract in Executive Session.
- No final or binding action can be taken in an Executive Session, nor can it be "a subterfuge to defeat the purposes" of the law.

**Meetings of Public Boards Must Provide the Opportunity for Public Comment**

- All public bodies (except the Legislature and its committees) must provide an opportunity for public comment, subject to reasonable rules adopted by that body.
- Louisiana School Boards (Except the Orleans Parish School Board), must allow public comment on each agenda item prior to taking a vote.
  - The Orleans Parish School Board sets its own public comment rules.

**Public Boards Must Give Proper Notice of All Meetings**

- Written notice of all regular public meetings must be given every January, including the date, time and place of such meetings.
- At least 24 hours written notice must be given for all regular, special or rescheduled meetings.
  - Except in the case of "extraordinary emergencies" like natural disasters.
  - The notice may be posted at the office of the public body or meeting place of the body, or in the official journal of the body.
    - Notice may also be sent to the news media if requested.
  - The notice must include an agenda, date, time and place. Upon a unanimous vote of the members present, the members may take up a matter not on the agenda.
- All public bodies must also post a copy of the Open Meetings Law.

**The Louisiana Legislature Sets its Own Rules and Procedures**

- The Legislature is not subject to the Open Meetings Law.
- The Legislature may hold closed meetings:
  - To discuss confidential communications; the character, professional competence or health of anyone subject to appointment or confirmation of appointment; strategy sessions or negotiations related to collective bargaining; to discuss prospective litigation (when an open meeting would have a detrimental effect on the bargaining or litigating position of the legislature); investigations that may elicit testimony of illegalities; cases of extraordinary emergency, such as "natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions or other matters of similar magnitude"; discussions of the internal operations or management of either house; and any other matters provided by joint legislative rules.
  - Also exempted are proceedings of certain state boards and discussions between a school board and a student or parents, unless they request a public discussion.
  - Relevant agency statutes may also provide more exemptions to the open meetings law.
- Each House of the Legislature sets notice provisions for its committees and subcommittees.

(Continued Inside)



Thanks to the Open Society Foundation, the IMPACT Program at the Greater New Orleans Foundation and a grant from the John S. and James L. Knight Foundation through the National Freedom of Information Coalition.

- The House of Representatives' Rules:
  - Require committee meeting notices to be posted on bulletin boards in the lobbies of both Houses no later than 4 p.m. or one hour after the House convenes (whichever is later) on the legislative day preceding the meeting.
  - Interim meeting (one held between sessions) notices are filed 10 days prior with the Clerk of the House of Representatives.
- The Senate Rules:
  - Require committee meeting notices to be posted on bulletin boards in the lobbies of both Houses "as soon as practicable," but no later than 1 p.m. on the day preceding the meeting.
  - Interim meeting notices must be filed with the Secretary of the Senate.
- For \$25 per year, citizens can receive notice of House and Senate interim committee meetings as well as joint committee meetings. Contact the Clerk of the House to subscribe.

#### What If a Public Body Violates the Open Meetings Law?

- File a complaint with the Louisiana Attorney General ([www.ag.state.la.us](http://www.ag.state.la.us)) or your local district attorney, who are both charged with enforcing the Open Meetings Law in their respective areas.
- The Attorney General or District Attorney can institute proceedings on their own, as well.
- An individual may file suit to require compliance with, prevent violations of, determine the applicability of, or nullify any action taken in violation of the law.
  - A suit to nullify must be filed within 60 days of the violating action.
  - Attorney's fees and costs of litigation may be awarded in full or in part to the prevailing citizen.
- A member of a public body who participates in an illegal meeting may be penalized up to \$100 per violation.

### CITIZENS' RIGHTS UNDER THE LOUISIANA PUBLIC RECORDS LAW (R.S. 44:1-41)

#### Anyone 18 or Older Can Examine Public Records of Any Public Agency

- Records are available from state, parish and municipal agencies or boards (including the Legislature).
- Public records requests may be submitted by mail, in person, by facsimile transmission, electronic mail, or an online public records request submission form if available.

#### Public Records Are Anything Used or Prepared in the Conduct of Public Business

- Physical form does not matter.
- Public records include such things as drafts of documents, statistics, maps, letters, memos, e-mails, budget requests, budgets, tapes, electronic data, payrolls, certain retirement information, and tax assessment rolls.

#### Any Request to See a Public Record Should be as Specific as Possible

- A written or electronically submitted request can provide documentation for subsequent action if the custodian denies the request. See sample letter to request public records online at [www.parlouisiana.org](http://www.parlouisiana.org).
- Fees cannot be charged, unless overtime is necessary.
  - Fees can be charged for copies at a reasonable rate.
  - The standard agency rate for copies is 25 cents for standard size copies.
- The custodian of the record may ask for identification for proof of age, and whether the requestor is a felon.
  - A felon who has exhausted all appeals may only request certain records.
- The custodian may require the requestor to sign a register.
- The custodian must provide "reasonable comfort" for reviewing a record.

#### If A Record is Not in "Active Use" When Requested, the Record Must be "Immediately Presented."

- If the record is in "active use," the agency must "promptly certify this in writing" and set a day and an hour within three working days from receipt of the request when the record will be available. If the agency says the record requested is not in its custody, it must "promptly certify this in writing" and "state in detail" the reason for the record's absence, its location and who has custody.
- The custodian may delete the confidential portion of a record to make the remainder available.
  - If it is unreasonably burdensome or expensive to separate the public portion of the record from the confidential portion, the custodian must provide a written statement explaining why.

#### Some Records Are Exempt From Production

- Louisiana exempts certain records of state and local agencies and

cites exemptions from other state laws.

- Court rulings can also provide exemptions.
- Exemptions attempt to prevent disclosure of individual confidential information, such as:
  - Medical and personal information.
  - Proprietary and financial data of individuals and businesses (including tax returns and occupational licensing records).
  - Certain public employee information is exempt including unlisted home phone numbers, home addresses and phone numbers (at employee's request), Social Security numbers, personnel evaluations (by court ruling), and medical, insurance and some retirement records.
- The exemptions also include certain records deemed not worthy of public consumption, such as:
  - Records pertaining to a legislative investigation in progress and certain records of prosecutive, investigative, law enforcement and correctional agencies or public health investigators.
    - However, some law enforcement records become public once relevant litigation is settled or a final judgment of conviction is made.
  - Hospital Records.
  - Records of financial institutions.
  - Security records regarding procedures, intelligence information related to terrorism and threat or vulnerability assessments created to prevent terrorism.
  - Trade secret and proprietary business information.
  - Attorney and expert work product done in preparation for trial is exempt.
  - For additional detail, see Section 4.1 of the Louisiana Public Records Law.

#### Initial Police Reports Are Public Record

- This includes a narrative description of the alleged offense.
- The time, date and location of the offense.
- The name and identification of each person charged with the alleged offense or arrested for it.
- The property or vehicles involved.
- The names of the investigating officers.
- Subsequent investigations and reports are not public record.

#### Records of the Governor Which Involve the "Deliberative Process" Are Exempt

- The "deliberative process" is the process by which decisions and policies of the governor are formulated.
  - This includes intra-office communications, the governor's schedule, and advice and recommendations of state agencies, which are privileged for six months after preparation.

#### Enforcing the Public Records Law If A Custodian Denies Access to a Record

- The custodian must provide written reasons (including a legal basis) within three working days.
- If a request is denied, or 5 business days have passed since the initial request, the requestor may file a civil suit to enforce his right.
  - The custodian bears the burden of proving the record is not subject to disclosure.
    - This must be shown by a privacy right or a specific exemption.
  - The courts must hear the plaintiff's petition quickly and render a decision "as soon as practicable."
- If the requestor prevails, the court "shall" award reasonable attorney's fees and costs.
  - If the requestor prevails in part, the court "may" award reasonable attorney's fees and costs should it see fit.
  - If the custodian prevails, the court may, at its discretion, award reasonable fees and costs.
  - The custodian and public body may each be held liable for payment of the requestor's fees costs.
    - However, the custodian cannot be personally held liable if he acted on advice of counsel for the public body.
- There are other penalties that may be imposed by a court, including:
  - Up to \$100 each day if the custodian arbitrarily failed to give a written explanation of the reasons for denying the request.
  - The requestor's actual damages may be awarded if the custodian acted arbitrarily or capriciously.
    - However, the custodian cannot be held personally liable if he acted on advice of counsel for the public body.
  - Criminal penalties also exist: anyone with custody or control of a public record who violates the law or hinders the inspection of a public record may be fined \$100 to \$1,000, or imprisoned one to six months on first conviction. On a second conviction, the penalty escalates to \$250 to \$2,000 or imprisonment of two to six months, or both.