



The Public Affairs Research Council of Louisiana

Body-Worn Cameras: The Legal Context in Louisiana

Some jurisdictions in Louisiana are considering the implementation or expansion of the use of body-worn cameras for law enforcement officers. Also, the Legislature has appointed a study committee to consider the impact of deploying this technology and potential legislative measures. This document, compiled by The Public Affairs Research Council of Louisiana (PAR), cites passages of state and federal laws that provide the current legal environment related to public access and privacy. The proper balance must be struck between the public's right to know about the operation of its government and other fundamental rights and security concerns.

Introduction

A growing number of state and local law enforcement agencies are acquiring body-worn cameras for on-duty officers. This trend extends to Louisiana, where the cameras are used in New Orleans and some other jurisdictions. Baton Rouge is conducting a pilot program with an intention to expand force-wide eventually.

Body-worn cameras raise important and complex questions for communities that wish to employ them. They raise issues of policing, safety, governmental transparency, public accountability, privacy, politics, public relations, technology, litigation and government budgeting. Their use also creates a new workplace environment for the troopers, police officers or deputies who wear them, an important consideration for agencies seeking to recruit and retain a quality force.

PAR does not take a position on whether law enforcement agencies should use body-worn cameras. But PAR does have a strong interest in government accountability and open access to public documents while remaining sensitive to privacy, security and workplace concerns. Considering the likelihood of the further proliferation of these cameras and the continued examination of them by the Legislature, body-worn cameras have clearly become a matter of statewide interest. This point is critical, because the state's laws and state court decisions on open records apply to local as well as state government.

When a new technology creates a novel form of public records – a common event in the digital age – some people might think new laws or exemptions are needed to cope with the changing times. Such a reaction may not be warranted for every new development. Louisiana's constitutional law for open records favors the public's right to access and compares well to sunshine laws in other states. It remains a good foundation and should be viewed as a durable guideline even as the technology environment evolves. Louisiana's statutes contain many exceptions, many of which are reasonable in light of privacy and security concerns.

The state's body of laws and the U.S. Constitution bear on these issues. Therefore, local governments must operate under these legal parameters. They cannot and should not venture to create new open records and privacy policies without regard to the rights of citizens as defined in the state Constitution and further defined in statutory law. Public records produced by body-worn cameras fit within this current structure. Efforts to circumvent or amend this legal structure should be met with the highest caution and scrutiny.

What follows here are essential highlights of laws affecting public access of police records in Louisiana.

U.S. Constitution Amendments

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

La. Constitution Article XII, Section 3. Right to direct participation

§3. Right to Direct Participation

Section 3. No person shall be denied the right to observe the deliberations of public bodies and examine public documents, **except in cases established by law.**

R.S. 44:31 & 1

§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.

§1. General definitions ("public record")

A... (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.

Exceptions Established by law (not comprehensive)

- §2. Legislative investigations
- §3. Records of prosecutive, investigative, and law enforcement agencies, and communications districts
(general law enforcement exceptions - see full text below)
- §3.1. Certain records pertaining to terrorist-related activity
- §3.2. Proprietary and trade secret information
- §3.3. Public power authority; commercially sensitive information
- §4. Applicability (not tax returns and others)
- §4.1. Exceptions (many listed by section of law)
- §5. Records of the governor
- §7. Hospital records
- §8. Louisiana office building corporation, special provisions
- §10. Confidential nature of documents and proceedings of judiciary commission
- §11. Confidential nature of certain personnel records; exceptions
- §12. Medical records of persons covered by the Office of Group Benefits programs

La. Constitution, Article I, Section 5*§5. Right to Privacy*

Section 5. Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court.

*Article I, Section 9**§9. Right of Assembly and Petition*

Section 9. No law shall impair the right of any person to assemble peaceably or to petition government for a redress of grievances.

*Article I, Section 2**§2. Due Process of Law*

Section 2. No person shall be deprived of life, liberty, or property, except by due process of law.

La. Title 44:3 (General law enforcement exception)

- §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).

PAR is an independent voice offering solutions to crucial issues in Louisiana through accurate, objective research and focusing public attention on those solutions.

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