



## Understanding Louisiana's Sunshine Laws

"Sunshine" is a term often used to describe laws that help citizens monitor and participate in the business of government.

# Technology & Sunshine in Louisiana

- New ways to store information and communicate through technology are developing quickly.
- Neither Louisiana laws nor court decisions have caught up with advances in technology. It is unclear whether newer ways of storing and sharing information or methods of communicating will be open to the public.

### 1. Do public records include electronic information and communication?

**Yes.** Public records include any document (regardless of physical form) that is created, used or kept in order to perform the business of a public body. Like other records, electronic information and communication should be available to the public unless they are specifically protected by law.

- Electronic information includes things like digital images, recordings or data stored in databases.
- Electronic communication includes e-mail. Like other records, it is the content and purpose that determines whether the e-mail is a public or private record. If the message exists for the purpose of conducting public business, the record should be public. The computer or e-mail account used to send or receive the message is not important.
- The custodian of the record must review the information requested and decide whether its content is public or private or a mixture of both.



- *Neither the law nor the courts have specifically addressed many forms of electronic communication such as voice mail, text messages, instant messages or conversations in Internet chat rooms.*
- *Just because a court or attorney general opinion has not recognized a type of communication as being a public record does not mean it is off limits. The custodian may still release it to you if you ask, or you may force the matter to be considered by a court.*

### 2. Can I request a public record by sending an e-mail to a public body?

**Yes.** You may ask for a public record in any manner—over the phone or in person, by e-mail or in a letter. Courts generally recognize e-mail as being the same as other types of writings (such as a letter sent by regular mail).



- *If you choose to send an e-mail request, be sure you are sending it to the correct person (the custodian) and remember to put a date in the body of your e-mail. The custodian is required to respond to your request within three business days.*
- *If your e-mail program is able, you may want to request delivery and read receipts to make sure your message was received and actually opened.*

### 3. Can I see or copy an electronic record if it has a mixture of private and public information?

**Yes.** Sometimes public records contain some information that is protected. Like other records, the custodian of the record is responsible for removing (redacting) the private portions of a public record and may charge a fee for doing so. The law does not specify an amount that can be charged.

#### 4. Can I request electronic records that are stored in a computer program or database?

**Yes.** The custodian is not required to give you full access to databases or programs, but may choose to do so. If your request requires specialized programming or modification to the program or database, the custodian may charge a fee. The law does not specify an amount that can be charged.

#### 5. Can I bring my own device to copy an electronic record?

**Yes.** Courts have ruled that you can ask the custodian to copy the records you want onto an electronic storage device such as compact disc (CD), digital video disc (DVD) or USB flash drive (also known as a “jump drive” or “thumb drive”).

You may also use a portable hand-held scanner or a personal copier to copy records. One exception is that personal copiers generally are not allowed in a clerk of court’s office.



- *If you make your own copies with your own device, the custodian should not charge you a fee.*
- *If you use the public body’s device to make copies or ask the custodian to make copies for you, the custodian may charge a reasonable fee. You should ask what the cost will be before you agree to accept copies.*

#### 6. Are public bodies required to keep (retain) electronic information and communication?

**Yes.** Generally, any public record must be kept for at least three years from the date it is created. This rule applies to electronic information (digital images, recordings, data) and communications (e-mail) as well.

The law does not require a public body to create or keep documentation of electronic communication that has not been specifically recognized as a public record (voice mail, text messages, instant messages and conversations in Internet chat rooms).

#### 7. Are public bodies required to post notices of their meetings online?

**No.** Generally, the law does not require public bodies to have a Web site or post notices of meetings online. Public bodies are not required to post online copies of meeting agendas, documents discussed at meetings or written minutes of meetings. However, many public bodies are choosing to do so.

Some public bodies keep a mailing list of persons who ask to be notified routinely about upcoming meetings. You can call the public body and ask what sort of information it provides online or through a mailing list.

#### 8. Are public bodies required to video, tape-record, film or broadcast their meetings live?

**No.** The law allows public bodies to video, tape-record, film or broadcast their meetings live but does not require them to do so.

Members of the public have a right to video, record, film or broadcast a public meeting. The public body has a duty to establish rules so that this can be done in an organized and orderly way.

#### 9. Can members of a public body “meet” online if the meeting is not open to the public?

**No.** While technology provides new ways for groups of people to meet, including Internet chat rooms, Web meetings and Webinars, it does not change the general requirements for open meetings:

- Public business must be conducted in an open manner. Meetings of public bodies must be open to the public.
- If there is a “quorum” (usually a majority) of members present *and* the members receive information, talk about or act on something that the body supervises or controls, then the meeting must be open to the public and proper notice must be given.