Louisiana's Sunshine Laws

Guaranteeing the Citizen's Right to Know

A PAR Analysis
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Introduction

The purpose of "sunshine laws" is to promote public access to government. These laws attempt to balance the public interest (the right to know how public officials make policy) with the individual's right to privacy. Also weighed against the public interest is the recognition that in some instances, such as criminal investigations, limits on public access may be needed. Louisiana has two "sunshine laws": the public records law and the open meetings law.

Although concern about sunshine laws is often perceived as a "media issue," it is more accurate to describe it as a public issue. The sunshine laws guarantee anyone, not just members of the media, access to public information. The media may be the most familiar and frequent users of these laws, but it is the public that ultimately benefits from the knowledge greater access provides. Policy decisions occur after drawbacks and benefits of various approaches have been considered. It is access to this process that these laws play a vital role in protecting.

Louisiana's Constitution states: "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). Additionally, the open meetings law states: "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 meetings law] shall be construed liberally."

The study first provides a summary of both laws. It then addresses the problems common to both (recourse, enforcement and awareness) and recommends solutions. The next section addresses public records problems (technology, fees and exemptions), followed by a section on open meetings problems (executive sessions and public participation). Although the study recommends a number of changes (especially to the public records law), Louisiana's laws are strong in many ways. Many of the problems with them stem from ignorance about their requirements, a lack of commitment to rigorously enforcing them, and a failure of the law to keep pace with technology.

While a comprehensive analysis of the exemptions from the public records law was beyond the scope of this study, a number of problems are evident and should be studied further as should the exceptions for the Legislature in both the public records and open meetings laws. Specific problems include exemptions related to gaming records, hospital service district records and law enforcement records.

Overview of Louisiana’s Sunshine Laws

Public Records
(R.S. 44:1-37)

The public records law allows anyone 18 or older to examine or receive copies of public records of any public body. The definition of both
Box 1
Definitions in Public Records Law

The public records law provides broad definitions of those entities and documents subject to it. It defines a “public body” as:

“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.”

It defines “public records” as:

“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 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 ... except as otherwise provided in this Chapter or as otherwise specifically provided by law.”

Records request is not related to grounds upon which the person could file for post-conviction relief. The custodian may also require the requester to sign a register. The custodian may not "review, examine or scrutinize any copy, photograph or memoranda" the requester possesses.

The custodian is required to provide “all reasonable comfort and facility” to the requester while he examines the record. The custodian must provide the records during regular office hours unless he authorizes the examination of the records at another time. If this is the case, the person overseeing the examination is “entitled to reasonable compensation,” paid by the requester. Other than in this situation, custodians are not allowed to charge requesters who want only to examine records. The custodian is required to separate the record from other records and provide it immediately to the requester if it is not in “active use.” If the record is in “active use,” the custodian 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.

Know v. No

Situation: A school board required that requesters of public records fill out a form asking their name and what organization they represent, the telephone number of their organization, and how the requested data would be used.

Why This Violates the Public Records Law: The law prohibits custodians of public records (in this case the school board) from asking any questions of requesters of public records other than the age and identity of the person and whether they are a convicted felon who has exhausted his appeal options. They may request that the person sign a register as well, but other than that they are not allowed to question the person.

If a public record includes information that is not public, the custodian may separate the non-public portion in order to...
respond to a request. If a custodian is uncertain about whether a record is public, he must notify the requester in writing of his determination and the reasoning behind it within three days.

Custodians of public records in state agencies are allowed to charge for copies based on a fee schedule adopted by the Commissioner of Administration. The current fee schedule requires a minimum charge of 25 cents per page for standard size copies. Other public bodies (non-state agencies) are not required to adhere to this fee schedule. Rather, they may charge what they deem to be “reasonable fees” for providing copies.

If a requester is denied access to a record he may immediately go to court to force the release of the record. If five days have passed since the initial request and the custodian has failed to respond, the requester may go to court. The law directs the courts to resolve such suits expeditiously. If the court finds that the custodian arbitrarily or capriciously withheld the requested record or failed to respond, it may award the requester any actual damages he can prove, as well as impose a civil fine on the custodian of up to $100 per day.

Criminal penalties may also be imposed (a fine of no less than $100 and no more than $1,000 or imprisonment of no less than one month nor more than six for the first conviction; for subsequent convictions, a fine of no less than $250 and no more than $2,000 or imprisonment of no less than two months nor more than six months or both.)

If the requester prevails in the lawsuit, the court is required to award him attorney fees and other costs of litigation. If he prevails partially, the court “may in its discretion award him reasonable attorney’s fees or an appropriate portion thereof.”

### Open Meetings

**Box 2**

**Definitions in Open Meetings Law**

The open meetings law defines a “public body” as:

“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.”

It defines a “meeting” as:

“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.”

### Open Meetings

**Box 4, R.S. 42:4.1-12**

The open meetings law requires that most public business be conducted in public and a record be kept of that activity. This law defines “public body” more narrowly than the public records law. (See Box 2.) It requires that any “meeting” be held in public unless specifically exempted. (See Box 3.) It prohibits public bodies from using any kind of proxy voting, secret balloting or any other tactic that circumvents the intent of the law. It also requires that all votes be voice votes, that they be recorded in the meeting’s minutes and that those minutes be a public record. (The Legislature is subject to different provisions governing open meetings. See Box 4.)

Public bodies must give the public written notice of any meeting 24 hours before the meeting, by (1) posting it at the public body’s office or building where the meeting will be, and (2) mailing a copy to any member of the news media who has requested notice of such meetings. The notice must include an agenda, date, time and place of the meeting. (With a two-thirds vote of the members who attend a meeting, a public body may take up an item not on the agenda.) If the public
**Box 3**

**Allowable Reasons for Executive Sessions**

Reasons allowed by law for public bodies to convene in executive session are:

1. Discussion of the character, professional competence, or physical or mental health of a person (person must be notified of proposed executive session at least 24 hours before and given the option of the discussion occurring in a public meeting instead); this exception may not be used to discuss the appointment of a person to a public body.

2. Strategy sessions or negotiations regarding 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 about the report, development or course of action of security personnel, plans or devices.

4. Investigative proceedings regarding allegations of misconduct.

5. Cases of extraordinary emergency (defined as natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions or other matters of similar magnitude).

6. Certain discussions of the State Mineral Board.

7. Discussions between a school board and a parent and/or student.

8. Any other matters now provided for by the Legislature or that may be provided for in the future.

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**Know v. No**

**Situation:** A finance committee of a school board reviewed the school system’s budget in executive session.

**Why This Violates the Open Meetings Law:** Allowable reasons for convening in executive session do not include review of budgets. All meetings of a public body must occur in public unless the reason for the meeting clearly falls under one of the exceptions to the open meetings law.

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**Know v. No**

**Situation:** A school board provided notice that it would consider a request for additional space for a preschool program. It did not, however, include in the notice the fact that fulfilling the request would require the closing of an elementary school.

**Why This Violates the Open Meetings Law:** The open meetings law requires public bodies to include in their notice of a meeting the meeting’s agenda. The notice provided in this case did not sufficiently describe the agenda item.

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body plans to discuss in executive session any litigation, the meeting notice (in the case of prospective litigation) must identify the relevant parties and subject matter or (in the case of pending litigation) the court, case number and parties.

Public bodies may go into executive session following a vote to do so (in an open meeting) by two-thirds of the members present. They must give the reason for the executive session and the discussion during the executive session must be limited only to those topics allowed by law. (See Box 3.)

Public bodies must keep written minutes of their open meetings which, at a minimum, must include: (1) date, time and place of the meeting; (2) names of members who were present; and (3) substance of all matters decided and, at the request of any member, a record (by member) of any votes taken.

The law directs the attorney general to enforce the law throughout the state and district attorneys to enforce it in their respective judicial districts. Either the attorney general or a district attorney “may” file a lawsuit if he becomes aware of a violation. The law says he “shall” file a lawsuit when anyone files a complaint with him about a violation, unless he gives written reasons as to why a suit should not be filed. Any action taken by a public body during a meeting that violates the open meetings law may be voided by a court.

The law includes a provision similar to that in the public records law for the awarding of attorney fees, in full or part, if
Box 4
Reasons for Which Legislature May Convene in Executive Session and Legislative Public Notice Procedures

The Legislature is subject to different open meetings provisions than all other public bodies. Executive sessions may be held by either house of the Legislature or any of their committees or subcommittees after a majority vote for:

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 employment, election, or appointment or confirmation by either legislative house or any committees or subcommittees thereof or by any other public body.
3. Strategy sessions or negotiations regarding 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 either legislative house or any committees or subcommittees thereof.
4. Discussion about a report, development or course of action of security personnel, plans or devices.
5. Investigations by either legislative house or any of their committees or subcommittees or any other joint or statutory committee whenever it is reasonable to believe that testimony to be elicited will reflect a failure of compliance with the law.
6. Cases of extraordinary emergency (defined as natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions or other matters of similar magnitude).
7. Discussion by either legislative house, or any of their committees or subcommittees, of any matter affecting the internal operations or management of the body.
8. Any other matters provided by law or by the joint rules of the Legislature.

The law does not require the Legislature to comply with meeting notice provisions that other public bodies must follow. However, it directs each legislative house to adopt rules for providing reasonable public notice of meetings. During legislative sessions, the House of Representatives’ rules require committee meeting notices to be posted on bulletin boards in the lobbies of the House and Senate no later than 4 p.m. or one hour after the House convenes (whichever is later) on the day preceding the meeting. The Senate’s rules require that its committee chairs post such notices in the lobbies “as soon as practicable,” but no later than 1 p.m. on the day preceding the meeting.

Committee chairs are required to file notice of interim meetings with the Clerk of the House (for House meetings) and the Secretary of the Senate (for Senate meetings). For $25 per year, citizens can receive notice of House and Senate interim committee meetings as well as joint committee meetings.

Know v. No

Situation: A city council appointed an advisory committee on crime composed of private citizens. The committee met without providing public notice of the meeting or permitting members of the public to attend the meeting.

Why This Violates the Open Meetings Law: An advisory committee of a city council, even if it is composed of private citizens, is a “public body,” according to the open meetings law. This means such a committee is required to provide public notice of its meetings and allow the public to attend.

the plaintiff wins the case. Any member of a public body who violates the open meetings law may be subject to civil penalties of up to $100 per day.

Problems Common to Both the Public Records and Open Meetings Laws

Recourse and Enforcement

Under Louisiana’s public records law, if a custodian denies a public records request or fails to respond within five days, the requester may challenge the custodian’s decision by filing a lawsuit. The open meetings law provides that anyone who believes a public body has violated the law may complain to the attorney general or district attorney’s office. Upon receipt of a complaint, these officials must file suit on behalf of the complainant or give written reasons for not doing so. Due to resources and politics, few suits are filed by the district attorneys and attorney general. The complainant is free to file a lawsuit himself at any time.

While the judicial remedy is an essential one, it is also an expensive one. Many private citizens cannot afford to hire an attorney. Even media outlets are often hesitant to sue out of fear that they will not recover their costs. Even though both laws state that a plaintiff who prevails in such a suit shall be awarded attorney fees and other costs of litiga-
tion, the courts have been inconsistent in awarding those fees to plaintiffs who prevail fully. (If a plaintiff prevails in part, the law states that the court may award the attorney fees.) The Ninth Judicial District Court recently refused to award attorney fees to a plaintiff who prevailed fully. The rationale for not awarding the fees was that the custodian acted in “good faith.” The law, however, does not give the court the discretion to consider “good faith” when awarding attorney fees.

Some states provide other options than filing suit to force the release of a public record or access to a public meeting. Four states (Connecticut, Florida, Hawaii and New York) stand out as particularly strong models for administrative recourse when public records or open meetings disputes arise. The effectiveness of any model, though, depends upon the commitment of those charged with upholding the law.

Connecticut—Freedom of Information Commission

Description: Since 1975 Connecticut has had this independent state agency with five part-time commissioners appointed to four-year terms by the governor with the advice and consent of either legislative house. The agency is charged with hearing and ruling on complaints about alleged violations of the state’s Freedom of Information law (encompasses both public records and open meetings). It is empowered to fine those who violate the law as well as those found filing frivolous appeals. The commission also settles cases informally through an ombudsman program, issues advisory opinions and educates the public and public officials about the state’s freedom of information law.

Benefits: An independent agency is in a strong position to promote public awareness of freedom of information issues. Members of the public have an avenue of recourse other than court (they do not have to hire an attorney to appear before the commission). However, they still have the option of appealing the commission’s decisions to the courts.

Drawbacks: Although the commission helps the public and public bodies save on legal expenses, the commission itself is expensive to operate. With a staff of 13, its 1997-98 operating budget is $886,665. The public must appeal to the commission before going to court. Although most cases are heard and settled within two months, the law allows the commission up to a year to settle a case. This is impractical in many instances for journalists on a deadline and also for concerned citizens trying to obtain access to information about pending public policy decisions. Because elected officials appoint the commissioners, politics may play a role in who is appointed.

Florida—Voluntary Mediation Program for Open Government Disputes

Description: This program is charged with mediating disputes between public officials and those requesting access to public records and meetings. It began informally with a lawyer in the attorney general’s office who, for several years, mediated such disputes. The program...
is also responsible for recommending needed changes in the law to the Legislature; assisting the Department of State in preparing training seminars regarding access; and reporting data on the numbers and types of requests received. In 1995, the Legislature wrote the program into the law but appropriated no additional funds for it. It continues today to be carried out by the work of the same lawyer. Since 1995, the program has received 237 requests for mediation, 174 of which have been successfully resolved. In most cases, a resolution is reached quickly, with almost all resolved in three weeks or less.

Benefits: The program is inexpensive to operate (cost is the salary of the attorney who mediates the cases) and provides an option other than going to court, thus potentially saving legal expenses for both the public body and the requester. There is no charge to the parties requesting the mediation. The decisions reached are non-binding; therefore either party can still choose to go to court.

Drawbacks: Because the program is voluntary, either party may refuse to participate in mediation. Housed in the attorney general’s office, the program may also be subject to political pressure.

New York—Committee On Open Government

Description: While the Committee On Open Government has no power to enforce the state’s public records or open meetings laws, it serves as an ombudsman and advisor to governmental agencies and the public. Composed of 11 members, it includes five from government and six from the public (at least two of whom must be current or former media representatives). It is empowered to issue advisory opinions to anyone who asks. The committee also issues general rules and regulations regarding the Freedom of Information law that agencies may use in adopting their own regulations concerning access. It is also charged with recommending to the Legislature and governor needed changes to the state’s sunshine laws.

Benefits: The committee provides a place for those denied access to turn and serves as an ombudsman. It also promotes awareness of the laws. With three staff members and a $170,000 budget, the committee is less expensive than similar agencies in other states.

Drawbacks: With no power to enforce the law, the strength of this committee is limited.

Recommendations To Solve Recourse and Enforcement Problems

Require attorney general’s office to review denials (by both state and local public bodies) of public records and open meetings requests if asked by requester to do so. Create a voluntary mediation program similar to Florida’s.

PAR receives many calls from frustrated private citizens and journalists who have been denied access to records or meetings. While PAR’s staff can offer callers guidance about the law and suggestions for handling the denial, there is not much more the organization can do to help.

When denied access to public records or meetings, requesters need a form of recourse other than filing a lawsuit. Lawsuits are expensive and time consuming. While district attorneys are sometimes helpful in intervening and settling disputes, they rarely file lawsuits on behalf of complainants. Part of the reason is that in many parishes the district attorney serves as a legal advisor to public bodies, as required by state law. This has created a conflict of interest for the district attorneys. The attorney general’s office also does not typically file suits.

The attorney general’s office could serve (at the requester’s option) as a “first stop” before going to court for denial of access to public records or public meetings. Non-binding mediation should be provided as an option for both public records and open meetings disputes. A number of the problems raised by custodians responding to PAR’s survey could be addressed through such mediation. For example, if a custodian believes a request is too broad and cannot resolve the disagreement with the requester, a mediator might be able to help. Requesters and custodians, however, should
retain the option to bypass mediation and go directly to court if they choose. As in Florida, the parties should retain the right to appeal the mediated agreement to the courts.

While an independent agency would probably command greater visibility than the mediation program, the expense of creating one is not likely to justify the benefits. In addition, mediation may, in fact, provide quicker results than the investigation and hearing process.

Eliminate requirement that an unsuccessful plaintiff pay attorney fees of a public body or custodian unless the suit is patently frivolous.

Under current law, an unsuccessful plaintiff in a public records suit may be required to pay the custodian’s attorney fees. This discourages individuals from filing suits. If a suit is clearly frivolous, then the plaintiff should be required to pay the fees. Otherwise, he should not. The proposed provision would also encourage public bodies to be more cautious about denying public records requests.

The open meetings law provides for the awarding of attorney fees if a suit is frivolous. Such language could be added to the public records law to protect a custodian faced with a frivolous suit. The enforcement section of the open meetings law states: “...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.”

Limit the attorney fees that may be awarded (to either plaintiff or defendant) to the rates outlined in the attorney general’s maximum fee schedule for the employment of outside counsel.

The attorney general’s office has a maximum hourly fee schedule that it follows for procurement of outside legal services. The schedule allows a maximum fee of $150 per hour, to be paid to attorneys with 10 or more years of experience. Less experienced attorneys are paid at lower rates.

Adoption of this recommendation would cap the fees a plaintiff or defendant could be required to pay. Plaintiffs and defendants could still choose to hire more expensive attorneys but the fees awarded by the court would be limited to what the schedule allows.

**Recommendations To Solve Awareness Problems**

Charge the attorney general’s office with educating public officials about the state’s public records and open meetings laws.

The overwhelming consensus that custodians of public records, elected officials and the public are unfamiliar with the law indicates a need for education. The attorney general’s office could be in charge of educating public officials and could work with other agencies and organizations. Other appropriate groups to involve might be organizations of public officials (i.e., associations of municipal officials, police jurors and school boards), the Civil Service Commission, state employee training programs, the bar association, the Louisiana Data Base Commission, PAR, the Louisiana Press Association, the New Orleans Press Club, and the Society of Professional
Journalists. An ongoing effort is needed due to the turnover of public officials. Lawyers for public bodies should also receive training in the public records and open meetings laws as part of their continuing education.

An education program might include brochures and pamphlets, videos, information posted on a web site and seminars.

Require all public bodies to post a notice in a prominent place in their office informing members of the public of their rights under the sunshine laws.

This notice could be in the form of a poster, similar to the posters employers must display informing employees of their rights under federal labor laws.

Add to the preamble of the public records law: (1) a statement that providing access to public records is part of a public employee or elected official's routine duties; (2) a statement that records are presumed to be public unless specifically exempted by law; and (3) a statement that the burden of proof for denying access to a public record rests with the custodian and the public body.

Much frustration, for public employees and requesters of public records, results from the fact that many public employees view the task of providing records as a responsibility that detracts from the time they have to do their job. Providing such records, however, is part of their job.

The presumption of openness ensures that exemptions will be interpreted narrowly. Although court cases have affirmed such a presumption, placing it in the statute will clarify it for custodians and the public. The open meetings law states that a liberal interpretation shall be presumed. Adding a presumption of openness statement to the public records law will make it more consistent with the open meetings law.

Requiring the custodian and public body to bear the burden of proof for denying access is consistent with the presumption of openness and the idea that exemptions will be narrowly construed.

What is a computerized record?

How much work are custodians of public records required to do to comply with a request for information in the computer? Are they required to put information in whatever format the requester wants?

May custodians charge for such work? If so, how should they determine the fee?

What is required of custodians when a requested, computerized record includes a mix of public and non-public information?

A 1996 Louisiana Supreme Court case (Nungesser v. Brown) addressed computerized records. The plaintiff had requested “a list” of certain investments of a public body that included information about the type of investment, interest rates and maturity dates. The information was stored in the computer but not all in the same record. The custodian had the information in separate lists that, if reviewed together, would have provided the information being sought. But because the information was not in “a list,” the custodian argued he was not required to provide even the separate lists that he had. The Louisiana Supreme Court agreed with him. The result was that he was not only not required to “create” a record but was also not required to release the information that would have satisfied the request.

Custodians should be required to make a reasonable effort to comply with requests for computerized information. In the Nungesser case, the cus-
the computer (even if it is not all in the same database or document) and is public record, it should be provided to the requester.

(See Fee section for discussion of situations in which special programming is required and discussion of copies of computerized records.)

The intent of the public records law is to provide access to information. Any information that is not exempt should be considered public and therefore open regardless of the format in which it is stored.

While Louisiana’s law broadly encompasses information stored in “electronic data processing” equipment, more specificity is needed to provide guidance to custodians and requesters of public records. Manipulation of data and generation of reports that does not require any programming should be fully within the custodian’s obligation. For requests that require programming, custodians should be allowed to charge based on the fee schedule for copies of records. (See Fee section.)

Broad language for addressing computerized records might be:

“For computerized records, all public information in the computer, not merely that which a particular program accesses, shall be available for examination and copying in keeping with the spirit of the public records law.”

Recommendations To Solve Computerized Record Problems

Require that all reasonable steps be taken to comply with a request for public information stored in a computer. If the information requested exists in

Require custodians to provide electronically stored informa-
tion to the requester in whatever form the requester prefers as long as the public body has the capability to provide it that way.

If the requester asks for the information on a disk rather than a hard copy, the public body should comply. The public body would, of course, retain the right to charge the fees allowed by law for providing it in a requested form. (For example, the per page fees for providing a hard copy.) If a requester asks that the information be provided in a particular software and the public body stores it that way or has the capacity to convert it, it should be done.

Require that all public bodies, when designing future computer systems and records, design them in a way (to the extent practical) that allows the easy separation of non-public information from the public information, thereby eliminating the need for extensive work to separate the two when a request is received.

Public bodies design computer systems and records to promote efficiency in the tasks that they perform most frequently. To the extent practical, they should also consider the ease with which their systems and records will allow them to comply with public records requests. A frequent problem is that public and non-public information is combined in a single record. The two types of information should be stored separately or they should be easy to separate. For example, a payroll system may include an employee master record with both public and private data on it. It may not be practical from an efficiency standpoint to store the two types of data separately, but the agency could have a program that would copy the data, excluding the non-public parts.

When purchasing or modifying existing computer systems, public bodies should consider the effect the proposed system or changes will have on storing, retrieving, and manipulating public records. The recently formed Data Base Commission may be able to advise them on this.

Prohibit public bodies from entering into any contract for the creation or maintenance of a database of public information that increases the fees charged to the public or otherwise limits access to such information.

The purpose of this recommendation is to prevent the problems that have occurred in other states. Any contract for the creation or maintenance of a database of public information should not increase the fees charged or limit the public’s access to such information.

Require that if a public body contracts with a private firm to provide previously public services, the records relating to the provision of those services remain public.

It is popular today for public bodies to contract with private firms for the provision of services. Access to information that would be public if the public body were still providing the service should remain public.

Fees Charged For Copies of Public Records

Current law has created two significant problems regarding the fees that may be charged for copies of public records. One is a lack of consistency among jurisdictions in charges for copies of public records. The second is the ambiguity concerning computerized records.

The public records law establishes two standards for charges of copies of public records. State agencies are directed to charge according to a fee schedule adopted by the Commissioner of Administration, unless the fees for the requested records are “otherwise fixed by law.” In contrast, all other public bodies subject to the public records law are allowed to charge a “reasonable” fee set by the custodian. No guidance is provided in the statute as to what “reasonable” means. As a result, local public bodies vary drastically in what they charge. Some give copies away because they receive so few requests. Some charge two dollars per page. The price a requester pays for a copy of a public record should not be based simply on the jurisdiction in which the record is requested.

State agencies are directed by the current fee schedule to charge a minimum of 25 cents per page for the first copy of a public record reproduced from microfiche or on paper up
A 1994 court case (Granger v. Litchfield) held that the reasonable fee for a local public body to charge for copies of computerized records was the actual cost of reproducing the information. The court further held that “actual cost” does not include the original cost of creating the computerized file of information and is not an estimate of the actual value of the information.

Recommendations To Solve Fee Problems

Make fees for copies of public records statutory and consistent among state and local public bodies.

Many states include the fee provisions as part of their public records law. This should be the case in Louisiana to make it simpler to determine the fees and to promote consistency. Some of the wording from the current schedule could become part of the public records statute. State and local public bodies should not be held to different standards. New provisions, applicable to all public bodies, should include:

1. Charges for copies based on the actual cost of reproduction, not to exceed 25 cents per page (in contrast to the minimum now specified) for copies of public records.

2. A requirement that custodians provide written estimates of the cost for copies of computerized records.

Exemptions From Public Records Law

In balancing public access to government with the individual’s rights to privacy, all public records laws exempt some information. Louisiana’s public records law includes many exemptions. In addition, a number of others are specified in other statutes. (See Box 5 and Box 6.) While a thorough analysis of the exemptions is
Box 5
Exemptions in Public Records Law

Please note: these are exemptions that are part of the public records law. Other exemptions to this law are included in other statutes.

- Tax returns or any information in tax returns (however, information on the face of an occupational license and information on whether a license has been issued is public).
- Information on those applying for "old age assistance, aid to the blind, aid to dependent children.
- Records in custody of state officials examining, managing or liquidating the business of any private person, firm or corporation.
- Certain records of financial institutions.
- Certain reports filed by insurance companies with the Louisiana Casualty and Surety Rating Commission and the Department of Insurance.
- Records in custody of Supervisor of Public Funds or actual working papers of the internal auditor of a municipality until the audit is completed.
- Information on the fitness of a person to receive or continue to hold a license to practice medicine or midwifery.
- Information on the fitness of a person to receive or continue to hold a license to practice as a dentist, dental hygienist, veterinarian, nurse, chiropractor, but action taken by the relevant licensing board regarding the person's fitness to receive or retain such a license is public record.
- Records with the Department of Conservation pertaining to estimated or proven recoverable reserves of oil, gas, or other minerals that have been presented or received as confidential by request of the owner.
- Records filed by or received from the Energy Information Administration of U.S. Department of Energy by secretaries of the Department of Natural Resources if non-disclosure was a requirement for obtaining the information and it could not otherwise be obtained by law from that agency.
- Any computer system, financial or trade secrets, or other third party proprietary information used with any automated broker interface system or any automated manifest system conducted by any deep water or shallow draft port commission.
- Certain Department of Health and Hospitals records that include technical information about a formula, method or process that is a trade secret submitted by a manufacturer of a product or mechanical sewage treatment plant to obtain or renew approval of such product for sale or use in Louisiana or to aid in enforcing sanitary laws and regulations.
- Any claims or pending claims in files of the Office of Risk Management, Division of Administration, or any municipality or parish.
- Records of boards or institutions of higher learning that relate to (1) trade secrets and commercial or financial information about a person or firm pertaining to research or the commercialization of technology; (2) data produced by or for faculty or staff on commercial, scientific or technical subjects that may in the future be patented or licensed; (3) those portions of research proposals submitted by an institution to the Board of Regents containing any information that may in the future be patented; and (4) those portions of private document collections donated to state higher education institutions designated by the donor to have restricted access for a specific period of time.
- Certain hospital records required by the Department of Health and Hospitals as a condition of licensing.
- Certain records related to morbidity or mortality reporting.
- Records within the Department of Wildlife and Fisheries Natural Heritage Program database on rare, threatened or endangered species or unique natural communities.
- Information collected by the Department of Agriculture as a result of questionnaires sent to private persons regarding the timber industry.
- Certain records related to maternal and infant mortality research.
- Name and address of a law enforcement officer in the registrar of voters’ or commissioner of elections' records if officer is engaged in hazardous activities so that it is necessary to keep his name and address confidential.

- Coroner’s report to the Department of Public Safety and Corrections and the Louisiana Highway Commission regarding accidental deaths involving motor vehicles.
- Records “ordinarily kept in the custody or control of the governor in the usual course of the duties and business of his office.” This exception does not prevent examination and copying of any books, records, papers, accounts or other documents pertaining to any money or financial transactions in the control of or handled by the governor.
- Various hospital records (medical records); records and proceedings of any public hospital committee, medical organization or committee or extended care facility committee.
- All documents filed with, and evidence and proceedings before the judiciary commission; however, records filed by the commission with the supreme court and proceedings before supreme court are not confidential.
- Selected items in personnel records of a public employee: (1) home telephone number where employee has chosen private or unlisted number; (2) home telephone number where employee has requested that the number be confidential; and (3) home address where employee has requested that the address be confidential.
- Medical records, claim forms, life insurance applications, requests for the payment of benefits, and all other health records of employees and dependents enrolled in State Employees' Group Benefits Program.
- Library records indicating what documents (regardless of format) have been loaned to or used by an identifiable individual or group; any records of any such library maintained for purposes of registration or for determining eligibility for the use of library services.
- Information on those insured provided to Department of Health and Hospitals by those authorized to issue certain types of insurance policies.
- All medical records, etc., of those applying for disability retirement from any state or statewide public retirement or pension plan.
- Records of retired members of public retirement systems, plans, or funds or of members who are participating in DROP, except for retirement allowance, final average compensation, years of creditable service and the names of the agencies with which he was employed and the dates of that employment.
- Records related to any charge or investigation under way by or through the Legislature until the case has been finally disposed of.

In addition to the above exemptions, the public records law states that it should not be construed to require disclosure of records or the information contained therein, held by the attorney general, district attorneys, sheriffs, police departments, the Department of Public Safety and Corrections; marshals, investigators, public health investigators, correctional agencies, communications districts, or intelligence agencies of the state that relate to: (a) pending or criminal litigation or any criminal litigation that can be reasonably anticipated until such litigation has been finally resolved; (b) the identity of a confidential source of information or records which would tend to reveal the identity of such a person; (c) security procedures, investigative training information or aids, techniques or technical equipment of instructions on the use thereof or internal security information; (d) the arrest of a person (other than the initial report) until a final judgment of conviction or acceptance of a guilty plea; the initial report includes a description of the alleged offense (including time, date, and location), the names of each person charged, the property involved, vehicles involved and the names of the investigating officers; (e) information that would reveal undercover or intelligence operations; (f) the identity of a victim of a sexual offense; (g) the identity of an undercover police officer or records that would tend to reveal such identity; and (h) status offenders as defined in the Code of Juvenile Procedure.
Box 6
Other Key Statutes That Provide Public Record or Open Meeting Exemptions

R.S. 46:1703 Marketing strategies and strategic planning by hospital service districts

This law allows hospital service district commissions to hold executive sessions for the discussion and development of “marketing strategies and strategic plans.” It also states that any marketing strategy and strategic plan shall not be public record.

R.S. 27:11 Louisiana Gaming Control Board

This law created the centralized gambling oversight board. It states that the records of the board are public except for those that relate to: (1) the background of an applicant and were provided by a confidential source or informant; (2) security measures of the board, an applicant or licensee; (3) an applicant’s personal history forms or questionnaires, disclosure forms, or financial statements or records; (4) surveillance and security techniques, procedures or practices of the board, an applicant or a licensee; (5) trade secrets or design of experimental gaming designs and equipment; (6) proprietary architectural construction, schematic or engineering plans, blueprints, specifications, computer program or software, or economic or financial calculations which relate to authorized gaming activities; (8) an ongoing investigation of the board into a possible violation by a licensee or permittee; until the board initiates proposed enforcement action and makes the record public in the course thereof; (7) results from or part of a board background investigation of an applicant.

R.S. 17:3390 University Foundations and Alumni Associations

This law states that a nonprofit corporation established for the purpose of supporting programs, facilities, research or educational opportunities offered by public higher education institutions shall be private entities. The receipt, investment, or spending of public funds shall not affect this private status. However, any records related to the receipt, investment or spending of public funds shall be subject to the public records law. No other records of such a corporation shall be subject to the public records law.

R.S. 15:547 Board of Parole

This law creates the Board of Parole. It directs the board to keep records on every prisoner released for parole. It allows the board to make rules governing the privacy of such records.

beyond the scope of this study, further study of them is needed. Many of the exemptions address personal information such as medical information, tax returns and Social Security numbers of individuals. Exemptions of this type are easily justifiable.

It is not so clear that all the exemptions are justifiable. For example, the state’s gaming laws and a law concerning marketing strategies of public service hospital districts have generated concern. Additionally, journalists and the public have encountered a number of problems regarding access to law enforcement records.

The gaming laws exempt from public access a number of documents about a gaming applicant’s suitability for licensing. While gaming is a business in many ways like any other (and therefore has a valid right to privacy), a distinguishing factor is that the state awards a limited number of gaming licenses. When much of the information that forms the basis of a licensing decision is exempt from public view, it is difficult for the public to determine whether the most qualified applicant received a license.

The hospital service district law allows hospital service districts to meet in executive session to develop marketing strategies and strategic plans. Plans developed in such meetings are not public. This exemption has been invoked broadly by hospital boards to keep private information such as the salary of a chief executive officer.

Other areas that should be reviewed in depth are those relating to investigatory records of law enforcement agencies, records of the Board of Parole, and issues surrounding juvenile crimes.

Recommendations To Solve Exemption Problems

Place each public record exemption in both the public records law and statute relevant to the subject matter of the exemption. Future exemptions should be placed in both laws as well. Each law should include a reference to the other.
While many exemptions to the public records law are listed in that law, many others are listed only in the statute relevant to the particular subject (for example, gaming exemptions listed in gaming laws). For purposes of simplification, the Legislature should amend the law to place each public records exemption in the public records law as well as the statute relevant to the subject matter. This would allow requesters of public records to review just the public records law or just the subject matter law to determine which records are exempt. Future exemptions should be placed in both the public records law and the relevant subject law.

Require letters of denial of access to public records to include a citation of the specific exemption upon which the denial is based.

Current law states that in situations in which a question is raised as to whether a record is public, the “custodian shall within three days...notify in writing the person making

would require greater specificity (which should be no problem if the basis for the denial is valid).

Other Recommended Changes to Public Records Law

Require that when a person requests a public record that contains exempt information, the custodian shall provide the nonexempt portion by deleting the protected part at no additional cost to the requester. However, the custodian may, in his discretion, provide the entire record unless it is prohibited by state or federal law.

Though jurisprudence has established that custodians are required to separate the two, the statute should clearly state this.

Remove the criminal penalties from the public records law except with regard to destruction of records.

The Legislature removed criminal penalties from the open meetings law in 1979. It would be

of records). They are rarely imposed because a higher standard of evidence is required than is needed to impose civil penalties. Criminal penalties require that the offender is found guilty “beyond a reasonable doubt.” In contrast, the civil penalties require simply a “preponderance of evidence” showing that the offense occurred. The criminal penalties are also unnecessarily harsh. They also do not appear to serve as a deterrent since many violations still occur. The law provides for civil penalties and these should be retained.

Require that initial police reports be available to requesters in a reasonable and timely manner.

The public records law requires that the initial police report of an incident provide certain basic information: a description of the alleged offense (including time, date, and location), the names of each person charged, the property involved, vehicles involved and the names of the investigating officers. There is no requirement, though, that the initial report be created and available to the public within a specified time frame.

Know v. No

Situation: A police department denied a request for access to the initial report of a crime stating that the initial report had not yet been compiled, even though several days have passed since the incident.

Why This Violates the Public Records Law: While arguably not a direct violation of the law, delaying the creation of an initial report violates the spirit of the law.

such request of his determination and the reasons therefor (sic).” While this language directs the custodian to provide a reason, the proposed change

appropriate to also remove them from the public records law (except with regard to destruction
**Know v. No**

**Situation:** An official from a state agency distributed a draft of a document, created by his agency, to the members of a public body during a public meeting. The document was intended ultimately for the governor to provide him with policy options. The official refused to give the document to members of the public attending the meeting claiming it was not a public record because (1) it was a draft; and (2) it was intended for the governor whose records are exempt from the public records law.

**Why This Violates the Public Records Law:** Although the document was a draft, this does not preclude it from being considered public under the public records law. A 1974 court case established that drafts of public records are indeed public. Additionally, the contention that the draft is an executive document is irrelevant. The governor’s exemption applies only to records in the governor’s custody, not records created by an agency to be given to him.

This change would add it to the statute.

**Problems With The Open Meetings Law**

Respondents to PAR’s survey indicated few problems with the open meetings law overall. However, executive sessions were repeatedly cited as a source of contention between public bodies and the public. Public bodies may enter into executive sessions for reasons allowed by law after two-thirds of the members present vote in public to do so. No final or binding action may be taken during an executive session. The law specifically prohibits the use of “any manner of proxy voting procedure, secret balloting, or any other means to circumvent the intent” of the open meetings law. (See page 3 for complete overview of open meetings law and Box 3 for allowable reasons for executive sessions.)

**Recommendations To Solve Problems With Open Meetings Law**

Require public bodies to tape record executive sessions in case a dispute arises about whether they violated the law.

Current law does not require public bodies to keep minutes, written or recorded, of executive sessions. Twenty-one states require public bodies to keep minutes and of those, two specifically provide the option of certified written minutes or tape recorded minutes.

This would encourage public bodies to comply with the law in convening executive sessions. The tapes could be kept by the public body in the same way public records are required to be kept. The tapes would not be public, however, unless a dispute arose that required an analysis of their content. If a
dispute went to court, the judge could listen to the tapes behind closed doors (in camera inspection) to determine the validity of the complaint.

Require that after an executive session a public body reconvene in an open session and take a roll call vote (to be included in its minutes) certifying that to the best of the members’ knowledge, only matters lawfully exempted from open meetings requirements and only such matters that were identified in the public notice of the meeting (as required in certain instances) or in the motion by which the executive session was convened, were heard, discussed or considered in the closed meeting. Any member of the public body who believes there was a departure from these requirements should state so and the statement should be recorded in the minutes.

This is suggested as a way to promote accountability among members of the public body. Requiring such a statement would make it uncomfortable for members of public bodies to disobey the law.

Amend the definition of a public body to include advisory committees appointed by an executive officer (mayor, governor, etc.).

Current law clearly states that an advisory committee appointed by a public body (a city council, for example) is subject to the Open Meetings Law. It is not clear, however, about whether an advisory committee appointed by a mayor, for example, is also subject to the law. While an attorney general’s opinion concluded that such a committee is public, the law should be amended to clearly state that.

Clarify the wording and expand the scope of a 1997 law requiring school boards to allow for public comment during their meetings.

The law is unclear. It reads: “Notwithstanding any other law to the contrary, each school board subject to the provisions of this Chapter 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. A comment period at the beginning of a meeting shall not suffice as a comment period.”

The law seems to require school boards to allow for public comment before the discussion of an agenda item and again prior to taking any vote. In fact, the attorney general’s office has advised them to do this to ensure they are in compliance. The law should clearly state this. The vote before which the comment period is provided should be the final vote on the agenda item. A clear definition of “agenda item” should also be included.

School boards should not be singled out as the only boards subject to this law. Therefore, in addition to clarifying it, the scope should also be expanded to cover all local public bodies.

Modify exception to the open meetings law that allows public bodies to discuss “the character, professional competence, or physical or mental health of a person” in executive session:

1. Require a certified statement by the public body that the person to be discussed was properly notified of the executive session and that the person chose not to require that the discussion occur in public.

2. Clarify that the exception applies only to individuals, not to corporations or partnerships.

Public bodies often use this exception [R.S. 42:6.1 (A) (1)] to convene in executive session. The exception requires that the person who will be the topic of discussion be advised at least 24 hours in advance of the proposed executive session and given the option of the discussion occurring in a public meeting instead. Sometimes public bodies fail to notify the person. Requiring a certified statement from the public body, read in an open meeting, would place a greater burden on them to comply.

A 1996 attorney general’s opinion found that the exception applies not just to individuals but also to juridical and artificial persons (e.g. corporations and partnerships). This could potentially allow public bodies to discuss businesses bidding for public contracts in executive session. The exception should be clarified to indicate that it applies only to individuals.

Prohibit the practice of “rolling” times for committee or other meetings of public bodies which result in a meet-
Some public bodies will issue a meeting notice listing the times of several meetings scheduled on the same day. They then add a note that the meetings will begin at the time stated or upon adjournment of the preceding meeting. This is not a problem if the meeting starts later than the posted time due to the preceding meeting lasting longer than anticipated, but the meeting should not be allowed to begin prior to the time stated in the public notice.

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