Louisiana's Sunshine Laws

The Promise and Peril of New Technology

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Introduction

Louisiana's sunshine laws aim to ensure government transparency and access to public information. Rapidly changing technology both expands citizen access to public records and meetings and creates new challenges. Government efficiency has grown with the ease of collecting and monitoring electronic information, but so has the potential for privacy invasion and public record destruction. Balancing the interests of individual privacy and collective security with a citizen's right to access has grown even more difficult following the events of 9-11. The conflict between sunshine laws and new technology has inspired a tremendous amount of discussion, legislative action and litigation around the nation.

Electronic government, or "e-government," commonly refers to the process of government serving its public electronically, both internally and through the Internet. Advancements in digital communication have increased the amount of public information and the speed with which it is disseminated, but new questions have emerged over what constitutes a public record (e.g. e-mail) and how meetings may be conducted. Public records formerly stored in remote file rooms can now be accessed online. Meetings are broadcast over the television or Web cast over the Internet reaching wider audiences. However, communication that once left a paper trail is now being transmitted digitally via easily deleted e-mail and Web postings.

The expansion of access to government records must be developed to ensure that information in digital format is no more fleeting than that on paper while also protecting the privacy interests of Louisiana's citizens. Although the public interest is served by an increasing amount of information being more broadly disseminated, new questions over what constitutes a public record or how meetings may be conducted must be answered.

This report divides Louisiana's technology-related sunshine issues into the topics of e-mail, Web sites, privacy and video/teleconferencing. Each topic is analyzed for its impact on the public records and open meetings laws. While some of the problems addressed in this report have not yet surfaced in Louisiana, they have already created challenges in other states. In summary, the report offers the following policy recommendations.

PAR has undertaken a year-long study of the state's public records and open meetings laws. A July 2002 report, entitled "Louisiana's Sunshine Laws: Technological Change and New Fears Challenge Open Government," updated the actions taken on PAR's recommendations made in a 1998 report and highlighted those areas where little or no action had been taken. In particular, the report drew attention to the continued need to better educate the public and public employees about the sunshine laws. The July report again urged better enforcement of the sunshine laws including the creation of a voluntary mediation program to assist citizens who are denied access to public records or believe an open meetings law violation has occurred.

This final report in this two-part series focuses on new issues that have arisen due to developments in technology including e-mail, web sites, archiving of public records, e-government, privacy, biometric technologies, videoconferencing, and teleconferencing. This report offers a series of recommendations for changes in the sunshine laws to address these issues.

Summary of PAR Recommendations

- **Amend the public records law to explicitly define e-mail and Web site information as public records.**

- **Amend the public records law to allow citizens to request public records verbally or in writing transmitted by any means–including regular mail, facsimile and e-mail.**

- **Amend the public records law to specify that the examination provisions in R.S. 44:32, that include age and registry requirements, relate only to in-person inspection.**

- **Require the Louisiana State Archives, in concert with the Office of Information Technology, to immediately post guidelines on the management of electronic records and update the records management handbook. The handbook should specifically address the retention of electronic records and provide a model for state and local public bodies in designing their own retention schedules. The handbook should be regularly updated to make sure that retention guidelines keep pace with evolving technology. Greater emphasis should be placed on training public employees about the retention policies and on their responsibilities as record custodians. The retention policies should accomplish the following:**

  - *Establish specific definitions for each aspect of technology. Some examples include Web resource, uniform resource identifier (URL), Web core, host page, link, client, Web client, World Wide Web, Web browser and metadata.*

  - *Establish specific guidance on the use of electronic media in conducting official business, on access to e-mail messages, and setting limits on personal use.*

  - *Establish clear rules regarding the management and retention of e-mail identifying appropriate methods of storage and which messages to save and for how long.*

- **Amend the open meetings law to prohibit a public body from using technological devices to circumvent the law.**

- **Amend the open meetings law to require public bodies to issue meeting notices via e-mail to those who request the service.**

- **Prohibit public bodies from charging fees for access to information online.**

- **Continue to require the publication of legal notices and other governmental information in official journals, but also encourage publication on agency Web sites and on the Louisiana e-government portal, the official gateway to public information in the state.**

- **Amend the open meetings law to require all public bodies to post meeting notices on the state e-government portal calendar and meeting notices and minutes on their Web sites, if they maintain one.**

- **Require public bodies to review data collection policies and allow only the collection of personal information necessary to conduct agency business.**

- **Allow citizens to conveniently and at no charge review and correct erroneous personal information held by public bodies.**

- **Amend the public records law to exempt from the definition of public record the following personal information: Social Security numbers, driver's license numbers, bank and credit card account numbers, electronic identification numbers and digital signatures. This should not exempt the entire record, but would require the filtering, or redaction, of confidential information prior to examination by a requester.**

- **Prohibit the sale and distribution of biometric identifiers for any purpose without the consent of the person being identified.**

- **Allow public bodies, except the Legislature, to meet through videoconferencing subject to the following safeguards:**

  - *An explicit statement that videoconferencing may not be used to circumvent the open meetings law.*
  - *A majority of the members of the public body must be physically present in the same location. Members at a remote location may not qualify to form a quorum.*
  - *Each remote location must be identified in the notice of the meeting and made accessible to the public. The notice should specify the location where a quorum will be physically present.*
  - *The public's right to attend, hear and speak at the meeting subject to the rules and regulations of the public body must be accommodated. Such accommodations should include sufficient seating, recording by audio and visual recording devices, and a reasonable opportunity for public comment to the same extent as would be provided absent videoconferencing.*
  - *Documents being considered must be made available to the public at each site of the videoconference.*
  - *No more than one-third of the public body's meetings in a calendar year may be held by videoconferencing.*
  - *Videoconferenced meetings must be recorded and a copy retained.*

- **Amend the open meetings law to prohibit public bodies from conducting meetings through teleconferencing.**

E-Mail and Public Records

Electronic mail (e-mail) represents one of the more significant challenges to the public records law, as it has largely eclipsed the use of the telephone in inter- and intra-office communication. Information that once resided in a phone message pad can now be found on someone's hard drive resulting in more personal information becoming part of the public record. E-mail has also largely replaced traditional written correspondence and reports that once left a paper trail. The rapidly expanding use of e-mail requires a new information management approach that incorporates digitally transmitted information into the sunshine laws and retention policies. Current retention policies address telephone, fax and other written communications. New technology must be included to make sure there are no gaps in documentation, inconsistencies or unnecessary duplication of records.

Current Law

Louisiana law broadly defines most government records as public regardless of physical form. The public records law generally includes electronic formats in stating that any public information "…regardless of physical form or characteristics, including information contained in electronic data processing equipment..." is a public record. However, even the broad language of the statute, similar to provisions found in other states, has resulted in confusion over what format constitutes a public record. This confusion could be removed if e-mail was explicitly recognized as a public record.

In 2001, a bill (HB 1804) proposing to exclude the text of e-mails (not their attachments) from the public records law passed through committee. This proposal represented a sharp departure from the current law because it attempted to exempt information based on its format rather than its content, setting a dangerous precedent in the era of e-government. By the time the bill reached the House floor, the sponsor had amended it to narrow the exemption to communications between legislators and their constituents. Although the bill was defeated, the issue is likely to resurface.

Several provisions of the public records law illustrate that it originated from a time when paper was the only method of recording information, that public record requests were primarily made in person, and that paper was vulnerable to damage from mishandling. One example is the manner in which public records may be requested. The law does not currently specify

how a public record may be requested. However, Louisiana courts have acknowledged that mail-in requests are acceptable. No legal judgment has been made regarding e-mail requests for public records, and it will remain a question unless answered by the Legislature.

Other provisions that are reasonable for in-person examination of records relate to age and registry requirements. Custodians of public records must respond to the requests of people who are eighteen years of age. The age limitation on public records access reflects a need to protect records from youngsters who may not properly value original records nor comprehend the penalties for mishandling them. The custodian may ask the requestor to sign a registry in order to identify who has handled the records in case of damage or loss.

The age and registry provisions are still appropriate for in-person inspection to prevent damage to original documents, but are not compatible in those circumstances that present no threat to public records as with requests through the mail or the Internet or for most information made available online. Privacy interests, however, present some instances where limits to online access may be appropriate.

Lessons From Other States

State legislatures have taken varied approaches to interpreting how e-mail fits within their public records laws. Many states view their existing public records law to include e-mail although the word is not specifically found in the definition. A few states, including California profiled below, amended the definition of "record" to include e-mail to end debate over the issue and avoid additional litigation. At the national level, federal courts have interpreted the Freedom of Information Act (FOIA) to include e-mail although the word does not appear in the act.

The California First Amendment Coalition noted that, while there had not been extraordinary controversy over whether e-mail was included in California's Public Records Act (PRA), there was just enough confusion to allow some state agencies to purge unsaved e-mails after a relatively short time without following a specific record retention schedule. Such action was criminal under the existing California PRA, which prohibited the custodian of public records from "removing or destroying public records." Concerned over these activities, California amended its PRA to expressly cover "transmitting by electronic mail or facsimile upon any tangible thing, any form of communication or representation...and any record thereby created, regardless of the manner in which the record has been stored."

Recommendations

- **Amend the public records law to explicitly include e-mail.**

- **Allow citizens to request public records verbally or in writing transmitted by any means–including regular mail, facsimile and e-mail.**

- **Amend the public records law to specify that the examination provisions in R.S. 44:32, that include age and registry requirements, relate only to in-person inspection.**

In order to prevent any further confusion regarding electronic messages in Louisiana, the public records law should be amended to expressly include information transferred through e-mail. This action would confirm the status of electronically transferred information as a public record subject to the same exemptions and retention requirements of all other public records. Likewise, record retention policies must be updated to specifically address the heavy volume of digital information in order to make sure that all public records are properly maintained. Record retention is discussed in greater detail in the following section.

The same privacy protections relating to other forms of information transmittal in public records law would apply to digital information. Communications that invoke a privacy right or indicate an expectation of confidentiality could be exempted by the courts on a case-by-case basis.

Similarly, the Legislature must address the issue of public record requests via e-mail. The law should describe the various methods that may be used to make a request and apply the age limit and registry requirements only to requests made in person. As more information is made available online, damage to

public records emanates increasingly from outside threats, such as with hackers, and less frequently from personal inspection. Online access may require different protections in order to preserve privacy. This issue is discussed in greater detail on page 12.

Record Retention Policies

Public records laws identify what records are accessible to the public in general terms, but record retention policies identify specifically what records will be available to the public and by whom and for how long the records will be retained. Because of the tremendous volume of data captured electronically and the ease of deletion, the importance of detailed retention policies is growing ever higher.

Every public employee who transmits public information on paper or by e-mail must follow the public records law. Without a retention policy in place, public employees run the risk of breaking the law every time an e-mail is deleted or a memo is tossed in the trash. The destruction of public records is a crime and the deletion of electronic records could be subject to the criminal statute in some cases. Accompanying that risk is the broader threat to open government every time a public record is destroyed.

The Archives and Records Program (State Archives) within the Department of State oversees the management and preservation of state records. State Archives provides training in records management and produces a records management handbook. The handbook guides public bodies in the development of retention schedules that are submitted to State Archives for approval. Unfortunately, the 2002 edition of the handbook does not address new forms of technology.

The Office of the Legislative Auditor conducted a performance audit of the Louisiana State Archives in 2001. This program oversees the management and preservation of state records. According to the audit, only about 10% of Louisiana agencies had submitted formal retention policies to the State Archives. That number grew to 40% in 2002. At the local level, municipalities have a similarly low compliance rate. The Office of the Legislative Auditor noted that "the risk of premature destruction of critical records is greater for those agencies without approved retention schedules."

Unless a public body has a retention schedule approved by State Archives, it is currently required to maintain all records for at least three years. With so few state and local agencies operating under approved retention schedules and digital storage space at a premium, it is not likely that information transferred through e-mail or published on Web sites is being saved for the required three years.

Currently, retention of most digital records is based on the capacity and settings of current software installed by information technology (IT) personnel. Most state agency e-mail systems allow for a maximum of 400 e-mails per user with an average life expectancy of 90 days unless the user alters those settings. Due to the widely varying nature of e-mail communication, such a limited, short-term and standard retention method falls short of preserving potentially valuable information.

Record retention schedules generally assign a minimum amount of time that public records must be retained. Like any other public record, information transmitted through e-mail should be retained for an appropriate length of time. To accomplish this, each message must be evaluated individually to determine where it fits in the retention schedule. The hands-off approach using system settings and broadly sweeping purges is insufficient, if not illegal.

Lessons From Other States

The process of developing an electronic record retention policy can take years. Several states have addressed electronic media in a very detailed manner and have published electronic records management guides to educate their employees. For example, Nebraska's Records Management Division began the process of analyzing its rules governing the retention of digital com-

munication including e-mail, e-messages, and Web pages a few years ago. Proposals for e-mail, imaging guidelines and Web page retention are currently in draft form with the hope that a final rule will be in place in 2003. To meet the demands of that complex and lengthy process, several states have shifted their technology-driven retention challenges to their information technology offices and departments–in Louisiana that would be the Office of Information Technology (OIT).

Recommendations

● **Require Louisiana State Archives, in concert with the Office of Information Technology, to immediately post guidelines on the management of electronic records and update the records management handbook. The handbook should specifically address the retention of electronic records and provide a model for state and local public bodies in designing their own retention schedules. The handbook should be regularly updated to make sure that retention guidelines keep pace with evolving technology. Greater emphasis should be placed on training public employees about the retention policies and on their responsibilities as record custodians. The retention policies should accomplish the following:**

- *Establish specific definitions for each aspect of technology. Some examples include Web resource, uniform resource identifier (URL), Web core, host page, link, client, Web client, World Wide Web, Web browser and metadata.*

- E*stablish specific guidance on the use of electronic media in conducting official business, on access to e-mail messages, and set limits on personal use.*

- *Establish clear rules regarding the management and retention of e-mail identifying appropriate methods of storage and which messages to save and for how long.*

Although the Louisiana State Archives plans to submit draft rules to the State Register that specifically address the retention of electronic records, guidelines should be posted on its Web site immediately until a final rule is promulgated. After considering technological expertise and staff availability, State Archives in concert with the OIT should work together to develop such guidelines and update Archives' records management handbook. States that have published records management handbooks that incorporate the management of electronic records can serve as models. The handbook should be updated regularly to keep pace with evolving technology. Greater emphasis must be placed on training public employees about the retention policies and on their responsibilities as record custodians.

The Louisiana State Archives needs to develop broad guidelines that specifically address every aspect of new technology including the proper retention schedules for electronic records and their technical requirements for storage. At the outset, the state should establish specific definitions for each aspect of technology, such as Web resource, uniform resource identifier (URL), Web core, host page, link, client, Web client, World Wide Web, Web browser, and metadata. Defining each component of new technology will add clarity to what the public records law requires.

At the department and agency level, all public bodies should establish specific guidance on the use of electronic media in conducting official business, on access to e-mail messages and on the management and retention of electronic records. Due to the widely varying forms of communication used by each public entity, retention policies tailored to the needs of the entity will be key to the thorough preservation of digital records.

Policies should define the proper use of e-mail and set limits on personal use. The low-cost nature of e-mail communication presents the necessity for administrators to set clear limits on the appropriate use of public e-mail accounts to prevent personal information from becoming public. Additionally, guidelines as detailed as how to title the subject line in messages should be set. To smooth the way for appropriate retention, messages should be identified clearly in the subject line, such as "2001 Annual Report" not just "Report." Folding the definition of responsible use into retention policies is important to preventing confusion over how to manage and retain e-mail.

Retention schedules must provide clear guidance regarding which messages to save and for how long. One of the key components to the efficient management of e-mail

rests with determining what messages are "transitory," items that can be disposed of immediately or after a very short period of time. Retention schedules help prevent inadvertent violations of the public records law. Considering the fact that many agencies have yet to establish retention policies for paper records, this will be a challenge– though necessary to prevent abuses of the law made more likely due to the rapid flow of information that technology provides.

Like any other record, retention or disposal of an e-mail message must be determined by an informed individual based on the information the message contains or the purpose it serves. The wide proliferation of e-mail, however, makes identification of the employee responsible for each record's retention more complicated than with paper records. Generally, the person sending an e-mail message should retain the record copy of that message. Public employees receiving e-mail from a non-government source would be responsible for maintaining a copy of the message. However, the varied uses and wide distribution of the message may result in many exceptions.

Other issues that need to be addressed in retention policies are the standardized methods of storage and the management of personal information (e.g. Social Security number) in public records. Storage capacities vary greatly and must be constantly monitored to ensure the proper retention of all public records and the availability of long-term access. Filtering, or redaction, of private information is most critical for information made available on public Web sites.

E-Mail and Open Meetings

The open meetings law requires that official business of all public bodies be conducted in an open and public manner. The law requires that notice of public meetings be given at least 24 hours in advance of the meeting, that the public be allowed to attend and that written minutes of meetings be made available as public record.

The ease, thrift and efficiency of e-mail communication expand the opportunity to increase access to public meetings. At the same time, however, new technology also expands public bodies' avenues for circumventing the law.

E-mail Conferencing

PAR has cited concern in the past over communication among members of public bodies that runs afoul of the open meetings law. New technology poses new opportunities to circumvent the law. While past abuses have included conference calls serving as impromptu meetings not attended by the public, e-mail offers a similar opportunity for members to "meet" without meeting.

A few states have expressly prohibited using technology for such a purpose. California has described in great detail how members of public bodies may not use e-mail to thwart the intent of its open meetings law. The California law prohibits meeting through "direct communication through technological devices...used by a majority of members to develop a collective concurrence as to action to be taken on an item..."

Notices and Minutes

The potential for publication and distribution of meeting information has been greatly improved by new technology. E-mail distribution of meeting notices and minutes saves public bodies the cost and time of mailing notices to those with Internet access and also provides 24-hour service as a convenience to citizens. Some Louisiana public bodies currently allow members of the public, regardless of media affiliation, to sign up for e-mail alerts that include news and meeting notices.

Recommendations

- **Prohibit public bodies from using technological devices to circumvent the open meetings law.**

- **Require public bodies to issue meeting notices via e-mail to those who request the service.**

E-mail, conference calls and instant message devices make it very easy for the members of a public body to quickly confer on an issue and reach a consensus out of public view. The use of technological devices to circumvent the open meetings law should be explicitly prohibited.

To expand access, all public bodies should be required to provide meeting notices through e-mail to all citizens who request the service. This will not supplant the existing notice provision that allows either posting or publication of notices in official journals, but instead add a requirement. While such an accommodation may seem like a luxury, it is congruent with society's increasingly greater reliance on electronic forms of communication, government's move toward greater efficiency and the spirit of encouraging transparency in government.

Web Sites and Public Records

Web sites are an important tool for widely distributing information, as they are broadly accessible, always available, and can be updated with relative ease. Like e-mail, the rapidly expanding use of Web sites by government entities to transmit information must be addressed in the public records and open meetings laws both to prevent abuse and encourage use. Currently, Louisiana law does not address Internet publication issues in either of its sunshine laws. Caution must be exercised in this area in order to avoid restricting information access to some citizens due to the Digital Divide–the division between those with Internet access and those without.

Web site use by public bodies to disseminate information to both the general public and public employees adds another dimension to the public records challenge. The public records law does not specifically include Web-related information although it is certainly not excluded either, and no formal policy exists to address the retention of Web-based information.

State agencies are required to submit copies of public documents to the Office of the Recorder of Documents located in the State Library of Louisiana. Public documents, like many public records, are increasingly found only in a digital format. Concerns about this trend prompted the State Documents Depository Program Committee to conduct a one-year study of the problem.

The Committee's report, issued in 2000, identified ongoing problems in the collection of public documents and the failure of the law to address documents published in an electronic format. The report noted that although public documents continue to be printed on paper, more agencies are beginning to rely exclusively on the Internet for distribution of information. The Committee also found that "many electronic documents that were available on agency Web sites last year or last month are no longer available." The Committee recommended that the State Library of Louisiana should be responsible for archiving and providing permanent public access to documents supplied solely in electronic formats.

The Committee study also identified the potential need to archive Web sites and recommended a survey of state agencies to determine if any agencies were preserving and archiving their Web sites. Although no agency has taken up this task, State Archives would be the ideal candidate.

The status of Web-based information as a public record is likely to travel the same confusing path as e-mail. Although the issue of electronic public records, including Web-based information, was outside the scope of the State Library study, similar action must be taken to address the loss of electronically transmitted public information. While the law generally classifies all information generated by public bodies as public record regardless of format, the lack of explicit language in the law to include Web-based information is likely to lead to needless litigation. Louisiana is not far behind other states in this matter, though, as the issue has yet to be addressed in most of the nation. The most prominent action has occurred at the federal level with the removal of information from several agency Web sites following 9-11.

Retention Policy Issues

The lack of retention policies that address Web-based information indicates the likelihood that important information could be lost as content-packed Web pages are updated. Fortunately, some agencies are using new software that automatically stores each version of Web pages. And, for less frequently updated sites, agencies could follow the lead of the federal government and some other states in developing a "snapshot" program to capture the content of agency Web sites, at least on an annual basis. However, without retention policies to require that Web-based information be archived, updated site data can be irretrievably deleted.

Fees for Public Information

E-government has allowed state and local governments to offer enhanced access to information. For example, many state publications that were formerly available for a fee to subscribers are now offered online for free. State laws, proposed legislation, the administrative code and regulations are all available online. In sharp contrast, several states have begun charging a subscription fee for similar information. Those governments are charging a premium for what is otherwise public information, while others generate revenues from their online services by allowing advertisements to appear on public Web sites.

PAR raised concerns about this issue in its 1998 sunshine law report and recommended that the Legislature head off potential problems by prohibiting additional fees for access that the public body or outside vendors managing public information might charge. While no action was taken on these recommendations, problems faced in other states fortunately have only begun to surface in Louisiana. Some local governments have created a dual service to citizens, offering basic online information for free and more detailed data for an access fee.

For example, the Caddo Parish Assessor offers free online access to basic property information such as the owner's name, municipal address, and assessed value. But, for $349 per year users can purchase a membership that allows 24-hour access to the same information that can be accessed from the terminals in the Assessor's Office. The additional public information that the fee purchases includes the legal description of the property, homestead tax status, transaction history and the tax district of the property. Many commercial entities have developed similar services.

Internet-only Publication

With the explosion of information "born digitally," the problem of limited access to public information is becoming increasingly complex. The Louisiana House Committee on House and Governmental Affairs is studying whether Internet publication should replace publication in official journals to disseminate legal notices and other governmental information. Internet-only publication of official notices is not appropriate. Publication in both official journals and on the Internet will reach the largest number of citizens and not limit those without access to information online.

Recommendations

- **Amend the public records law to explicitly include Web site information in the definition of public record.**

- **Prohibit public bodies from charging fees for access to information online.**

- **Continue to require the publication of legal notices and other governmental information in official journals, but also encourage publication on agency Web sites and on the Louisiana e-government portal, the official gateway to public information in the state.**

In order to avoid the problems presented in the e-mail debate, the public records law should be amended to include Web-based information. Similarly, the Louisiana State Archives policy on record retention should address issues presented by Web-based publication of public records.

To ensure that access to public records is not limited, the public records law should be amended to prohibit access fees for public information and require contracts with outside vendors to stipulate that no

fee will be charged for access. Although this restriction may serve as a disincentive to making information available online in some instances, most public bodies will continue to expand online access as it is still more cost-efficient than responding to individual requests. This prohibition should not limit the public body from charging the actual cost of responding to requests that require special computer programming. The entities that have begun to charge for enhanced access would have to end those practices and seek alternative methods of generating revenue.

To broaden public access to information, public bodies should be encouraged to post public notices to agency Web sites and to the Louisiana e-government portal, but continue to require publication in official journals.

Web Sites and Open Meetings

The ever-expanding use and availability of Web sites presents new possibilities for publication and distribution of meeting information. Just as minutes and notice can be e-mailed, they can also be posted to agency Web sites. Many Louisiana public bodies are currently taking advantage of this citizen-friendly opportunity. Louisiana's Office of Electronic Services (OES) is developing the state e-government portal that will serve as the official gateway to all information that is available online from agency Web sites. OES has also begun to design a statewide meeting calendar that will enhance citizen access to meeting information. Calendars in other states include such information as time and place details about public meetings; the name, phone number and e-mail address of an agency contact, and the agency's Web site address.

While these e-government projects point the state in the direction of taking full advantage of new technology with regards to open meetings law, it is unlikely that all public bodies in the state will follow their lead without proper incentive. Some public bodies with Web sites up and running are not currently posting meeting information on their sites. Such an omission may indicate reluctance on the part of administrators to develop new policies and practices that take full advantage of technology when the primary benefit is to the citizen rather than the agency. However, Web posting potentially reduces the costs associated with mailing notices, so public bodies can benefit when technology is fully utilized.

Recommendation

- **Require all public bodies to post meeting notices on the state e-government portal calendar and meeting notices and minutes on their Web sites, if they maintain one.**

In order to assure the broadest possible dissemination of information to the public, the open meetings law should be amended to require state and local public bodies to participate in e-government. Some avenues to explore include the use of their own Web sites, centralized virtual information centers like the e-government portal and other citizen friendly tools as they become available. Public bodies that do not have sufficient resources to maintain a Web site should only be required to submit notice information to the state e-government portal calendar. E-postings, however, should in no way replace traditional postings.

Privacy

The Louisiana Constitution specifically recognizes an individual's right to privacy and a right to dignity. Article I, Section 5 states: "Every person shall be secure in his person, property, communications, houses, papers and effects against unreasonable ... invasions of privacy." Privacy rights and the right to public information are increasingly difficult to balance. Private information is exempted from the public records law on a case-by-case basis. However, specific types of private information have been exempted in Louisiana statutes. Examples of those exemptions include personal data about public school students, teachers, law enforcement officers and crime victims.

With the expanded use of the Internet, concerns over citizens' right to privacy have sharpened. The vulnerabilities of electronic data systems to hacker attacks and simple human error in publishing private information to the Web have resulted in the release of confidential information in numerous instances. Such privacy invasions add a new dimension to the debate over public records access. Table 1 offers an example of some of the databases Louisiana now offers online.

Identity Theft

As more documents are made available online, the possibility of identity theft increases. Recently, Louisiana universities and colleges have decided to change long-standing policies relating to the use of Social Security numbers for student and faculty identification purposes. Also, Louisiana drivers have been able to omit Social Security numbers from driver's licenses since 1996. In response to increasing cases of identity theft, Louisiana enacted a criminal law in 1999 listing various personal identifiers frequently exploited by criminals including: Social Security numbers, driver's license numbers, bank and credit card account numbers, electronic identification numbers and digital signatures.

A combination of the information listed in the identity theft law would allow a criminal to obtain a credit card and set up bank accounts or other types of services without the knowledge of the victim. Clearing up financial records or other databases can take years. Several Louisiana Attorney General (AG) opinions have addressed whether personally identifiable information may be released in connection to a public records request. The AG has identified several types of information that are private, although not specifically exempted from the public records law, including Social Security numbers, private phone numbers and addresses of private citizens.

Records available in courthouses have fueled the most intense debate over what level of public access is appropriate and required under the public records laws. Although many records have always been theoretically available to the public, they were shielded by what commentators term "practical obscurity." A record stored in a dusty backroom causes little alarm, but the combination of records made available digitally with relative ease heightens the level of concern for personal safety and privacy.

TABLE 1
Sample Databases Available Online in Louisiana

Database Type	Responsible Public Entity
Corporation Information Notary Information Civil Suits Parties	Secretary of State
Candidate Information	Commissioner of Elections
Sexual Predator Information	Department of Public Safety
Delinquent Taxpayers	Department of Revenue
Delinquent Child Support Payers	Department of Social Services
Professional Licenses	Medical Examiner Board, Bar Association
Geographic Information System	Department of Natural Resources Department of Transportation and Development Department of Environmental Quality
Assessor Records	Caddo and Lafayette Parish Assessors

Access Pros and Cons

The reality of immediate access evokes a wide range of responses. Commercial interests are pleased to have greater access to personal information for marketing purposes. Individuals wanting more data about others for personal or professional reasons appreciate the ease of access. However, when that same access results in profiling of themselves, the response frequently changes. In order to address fears about Internet usage, most states have privacy and security policies posted on their Web sites. But they continue to grapple with the bigger task of deciding what documents should be made available online.

A wealth of information can be culled from public records ranging from the mundane to the highly confidential. Conveyance records identify whether or not a home is armed with an alarm system, domestic files divulge the names and ages of children, and house plans attached to sale documents are all matters of public record. Cases are cropping up nationwide that illustrate the hazards of providing broad access without first examining potential problems. The Electronic Privacy Information Center, a Washington, D.C.-based public interest research center, has commented that states may consider changes to public records laws because of the advent of "digital dossiers."

Federal courts are authorized to make civil and bankruptcy cases available online only after the removal of personal information. The amount of information removed then becomes the issue. Advocates of open government believe it would be better to limit the amount of personal information collected initially rather than closing access to records after collection.

Court Records Online

Courthouses contain a vast cross section of public records. All people will eventually have parts of their lives documented and preserved in a courthouse. Birth, marriage, home purchases, mortgages, judgments, and death all unfold in the courthouse records. Sensitive personal information including Social Security numbers, specific financial data such as credit card numbers or personal identification numbers, and medical information are scattered throughout cases. Although the law requires that some of the information be submitted for public record, much is frequently included that is not necessary. As public records have become available online in a growing number of jurisdictions, new problems and concerns have erupted.

Louisiana's public records law requires custodians to segregate exempt information prior to releasing what is otherwise a public record. However, entire case files are routinely handed over to requesters without the redaction of any information, and clerks of court are required to remove Social Security numbers only upon written request in very limited cases.

Seeking Balance

In seeking balance between the public's right to access information and the individual's right to privacy, several approaches can be taken with regard to online publication of information.

Limit what is posted online. Post only the court indexes, registers and calendars on the Internet rather than the full text of certain public records. Full-text access would be limited to attorneys and parties. Family law cases provide the best example of matters deserving limited access because the resolution of the case is important, rather than the details.

Filtering software. Use software that will automatically redact exempt personal information. Confidential information would be tagged and blocked from view prior to release on a Web site.

Case-by-case judgment. Rules of court would consider what cases are appropriate for full-text online access and what would be limited to case details.

Nationally, the debate over the extent to which court records should be accessible online has not yielded a definitive answer. Although PAR favors the broadest possible access to public records, the appropriateness of putting court records online that contain much personal information is problematic. To avoid some of the problems experienced by other states, Louisiana must approach this issue with caution.

Biometric Technologies

Both the private and public sectors are beginning to make greater use of biometric technologies in order to detect fraud and improve security. Biometric identifiers are used to create profiles based on an individual's physical characteristics–typically using the hand, eye, voice or face. Images taken by surveillance cameras can be compared to photographs contained in databases. Hand and retinal scanners can be used to monitor employee activity more effectively than machine-punched paper timecards.

For example, the Philadelphia School System plans to expand the use of biometric technology to all of its 30,000 employees–including teachers. Some states currently embed fingerprints in driver's licenses. Facial mapping technology was used to identify criminal suspects in the high-density crowds attending the Super Bowl in 2001. Despite limited success, the technology has been expanded in airports in hopes of capturing terrorists.

The combined power of surveillance devices and biometric technology to capture information requires great caution to prevent abuses. As biometric technology is implemented, guidelines providing privacy protection must follow. Great harm may be prevented by identifying criminals or lost children, but the fundamental notion of freedom is altered by a government that perpetually observes its citizens. Few states have enacted legislation relating to biometric technology. However, one state that has acted, Texas, prohibits the capture of a biometric identifier for a commercial purpose unless the person giving the identifier consents. Individuals and governmental bodies who possess biometric identifiers may not sell the information.

Recommendations

- **Require public bodies to review data collection policies and allow only the collection of personal information necessary to conduct agency business.**

- **Allow citizens to conveniently and at no charge review and correct erroneous personal information held by public bodies.**

- **Exempt from the definition of public record the following personal information: Social Security numbers, driver's license numbers, bank and credit card account numbers, electronic identification numbers and digital signatures. This should not exempt the entire record, but would require the filtering, or redaction, of confidential information prior to examination by a requester.**

- **Prohibit the sale and distribution of biometric identifiers for any purpose without the consent of the person being identified.**

Louisiana has taken a piecemeal approach to identifying what records are exempt from public records law and has not decided which categories of records should not be released. The public records law should include a provision that identifies personal information that must be redacted from public records, as identified by the courts and the Attorney General.

Louisiana legislators should also address the possibility of limiting the amount of personal information that is collected by public entities. Only enough information to accomplish the duties of the entity should be collected. Congruently, provisions should be enacted to grant citizens the right to review and correct erroneous personal information being collected by public bodies. The review and correction process should be convenient and free of charge.

To further protect citizens from frivolous collection and distribution of their personal information, the Legislature should require all state and local public bodies to post privacy and security policies on their Web sites and in their offices.

The state should also prohibit the sale and distribution of biometric identifiers for any purpose without the consent of the person being identified

Video/Teleconferencing and Open Meetings

Technology has expanded the ways in which meetings can be conducted. Meeting participants no longer have to be in the same room to look each other in the eye as they make decisions or debate issues. Using audio and video technology, participants can hold voice-only meetings via teleconferencing or live video meetings via videoconferencing. Such meetings are common place in the private sector, and their popularity is rapidly growing in the public arena. According to the Office of Telecommunications, Louisiana agencies spent 2.9 million minutes on videoconferencing alone in 2001 with distance learning and tele-medicine filling most of that time. Increasing the viability of long-distance meetings, the number of public videoconferencing sites throughout the state has grown from two to 300 in the last four years.

According to several Attorney General opinions, Louisiana law does not allow public bodies to hold meetings through teleconferencing. However, in recent years legislators have proposed changing the open meetings law to allow for electronic meetings. Legislation proposing the use of videoconferencing for interim legislative committee meetings first appeared in 1997. A 2001 videoconferencing proposal stated that rules governing long-distance meetings would provide for public participation and that voting would be prohibited on any issue at such meetings. The bill did not provide guidelines for how public participation would be managed. No videoconferencing bill has passed, but the convenience and thrift of long-distance meetings is certain to tempt lawmakers to reintroducing the matter.

Members of public bodies have sought the Attorney General's opinion on the possibility of attending meetings through teleconferencing. The AG's analysis has turned on the interpretation of the *viva voce* requirement stated in the open meetings law. One such request came from a board member of the New Orleans Center for the Creative Arts Institute/Riverfront (NOCCA) who asked if a member located in Shreveport could attend and vote via teleconference rather than travel to attend a NOCCA meeting in New Orleans. The AG advised that *viva voce*, which translates to live voice, requires the member to be physically present, along with other members of the public body, to cast a valid vote and to form a quorum for the meeting. The AG also relied on the provisions of the open meetings law that prohibit proxy or secret voting. The AG's opinion stated that the public could best observe and evaluate the meeting with board members present.

Some states limit video conferencing to emergencies or to certain types of public bodies. Opponents have raised concerns that the open meetings law would be undermined by electronic meetings due to the likelihood that cameras would fail to capture all discussions or influences at a remote location.

Lessons From Other States

Videoconferencing and teleconferencing are allowed to some extent in most states. Some states allow all public bodies to conduct meetings through electronic means subject to specified safeguards. Others limit the number of meetings that can be conducted electronically, allow such meetings only in the event of an emergency, or limit which groups may meet in such fashion.

Most states that allow such meetings specifically define videoconferencing and teleconferencing in their open meetings laws. One state defines videoconferencing as, "conducting a meeting involving participants at two or more locations through the use of audio-video equipment that allows participants at each location to hear and see each meeting participant at each location, including public input."

An important aspect of this definition is that the law requires the meeting format to allow the possibility of interaction between meeting participants at all locations. Another important aspect is that each participant can see (or hear, in the case of teleconferencing) each of the other participants. Such requirements serve to satisfy the open meetings requirement that ensures the right to public comment and observation.

Similar to Louisiana, Nebraska also has a *viva voce* requirement but

has expanded the open meetings law to allow members to meet through electronic means. Nebraska's law is even more stringent than Louisiana's as a roll call vote is required for every vote a public body takes even if all members are located in the same place.

The extent to which video conferencing is actually used by other states varies. Many states surveyed have reported that, while video and teleconferencing is allowed, it is not used because the safeguards are too burdensome. Other states report that only smaller boards utilize the technology.

Recommendations

- **Allow public bodies, except the Legislature, to meet through videoconferencing subject to the following safeguards:**
  - *An explicit statement that videoconferencing may not be used to circumvent the open meetings law.*
  - *A majority of the members of the public body must be physically present in the same location. Members at a remote location may not qualify to form a quorum.*
  - *Each remote location must be identified in the notice of the meeting and made accessible to the public. The notice should specify the location where a quorum will be physically present.*
  - *The public's right to attend, hear and speak at the meeting subject to the rules and regulations of the public body must be accommodated. Such accommodations should include sufficient seating, recording by audio and visual recording devices, and a reasonable opportunity for public comment to at least the same extent as would be provided absent videoconferencing.*
  - *Documents being considered must be made available to the public at each site of the videoconference.*
  - *No more than one-third of the public body's meetings in a calendar year may be held by videoconferencing.*
  - *Videoconferenced meetings must be recorded and a copy retained.*
- **Prohibit public bodies from conducting meetings through teleconferencing.**

Louisiana has an expansive network of videoconferencing sites that could facilitate electronic meetings of public bodies. Citizens located in the far reaches of the state could participate in meetings without having to travel great distances, sacrificing time and resources. Videoconferencing encourages public participation and saves on travel expenses. These benefits are congruent with the values represented in the open meetings law.

The open meetings law should be amended to include the option for public bodies to hold meetings using videoconferencing on a limited basis and only if the safeguards described above are adopted. This would accommodate members who are not able to attend all meetings in person but who wish to participate and are needed for important policy decisions.

The Legislature should be prohibited from using videoconferencing because the legislative process requires extensive personal interaction among legislators and with the public, the media and other public servants. As a practical matter, legislators' attendance at multiple committee meetings and work in legislative chambers would make videoconferencing difficult to use.

Teleconferencing should not be allowed. The audio-only nature of teleconferencing limits public access to important information held in the body language and facial expressions of meeting participants. Teleconferencing is not an acceptable replacement for *viva voce* voting.

Conclusion

New technology has raised a myriad of issues affecting access to government. An increasing amount of public information travels through e-mail and is posted on agency Web sites allowing more and speedier access to citizens. The Legislature has garnered national praise for its successful e-government initiatives that include laptops with e-mail capabilities, online access to bills at each step of the legislative process, and Web casts of the legislative sessions and committee meetings. The creation of the Office of Information Technology and the appointment of a Chief Information Officer have recog-

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CONCLUSION (Continued)

nized the importance of technology in the public sector and the need for leadership and coordination of state policy.

However, the expanding use of new technology must be balanced with strategies that make sure information in an electronic format is no more fleeting than that on paper and that the benefits are actually experienced by citizens. Meetings conducted from remote locations in the private sector are creating expectations of similar efficiencies in the public sphere.

Success in protecting public information and individual privacy relies in part on updating the sunshine laws. However, the proper maintenance of public records falls largely to administrative policy and the training of public employees. Detailed retention policies will fail if those in control of public information do not understand how the rules apply to electronic records. The laws and policies affected by rapidly changing technology must be drawn broadly enough to include new forms of communication while giving specific instruction on the proper transmission and maintenance of public data.

This report attempts to provide solutions to just some of the more prominent issues that have surfaced. Other emerging problems yet to be tackled include the expanding use of surveillance technologies and the impact of the federal Homeland Security law that limits access to security information. The potential use of national identity cards and "smart cards" that link biometric identifiers with various databases, including financial and health information, raises a slew of tough questions. New challenges will evolve as technology changes.

Louisiana has a strong foundation in its current sunshine laws, but they will need to be continually adapted to address the demands of new technology. Action must be taken to enjoy all of the potential benefits of technology and avoid the erosion of openness in government. Clearly, it is time to make those changes that will strengthen the law and provide answers for future challenges.

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