



Citizens' Rights Under the Louisiana Open Meetings Law

(R.S. 42:11-28)

The Open Meetings Law ensures that public business is performed "in an open and public manner"

- Citizens have the right to attend the deliberations of public bodies on the city, parish and state level.
- All votes in meetings must be made by voice vote and recorded in the minutes.
- Open meetings laws do not apply to judicial proceedings, but many courtrooms are open to the public.

Meetings of Public Bodies Must Be Open to the Public

- Public bodies include city and parish governing bodies; school, public utility and levee boards; port commissions; planning, zoning and airport commissions; other state, local and special district boards with policy making authority, advisory or administrative functions; as well as all committees and subcommittees.
- Public bodies must keep written minutes of open meetings showing the substance of all matters decided.
 - This must include the date, time and place of the meeting and a list of those present.
 - At the request of any member, the record shall identify each member's votes.
 - These minutes are public records.

Exception to the Open Meetings Law: Executive Session

- Going into executive session requires a 2/3 vote of members present.
- The board's minutes must reflect a reason for holding an executive session:
 - Discussion of the character, professional competence or health of a person.
 - The person must be given 24 hours notice except in an emergency.
 - This cannot be used to discuss an appointment to the public board or body or the award of a public contract.
 - Discussion of strategy or negotiations regarding collective bargaining or prospective litigation.
 - Prospective litigation may only be discussed after a formal written demand.
 - Ongoing litigation may be discussed when "an open meeting would have a detrimental effect on the bargaining or litigation position of the public body." The agenda must identify what litigation is discussed.
 - Discussion of security personnel or plans.
 - Investigations of alleged misconduct.
 - Cases of "extraordinary emergency," which are defined as a natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, invasion or "other matters of similar magnitude."
 - For additional details and other exclusions, see Louisiana Revised Statute 42:17.
- No final or binding action can be taken in an executive session, nor can it be "a subterfuge to defeat the purposes" of the law.

Public Boards Must Provide Public Comment Opportunity

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

Parish School Board sets its own public comment rules.

Public Boards Must Give Proper Notice of All Meetings

- Written notice of all regular public meetings must be given every January, including the date, time and place of such meetings.
- At least 24-hour written notice must be given for all regular, special or rescheduled meetings, except in an "extraordinary emergency," such as a natural disaster.
 - The notice may be posted at the office of the public body or meeting place of the body, or in the official journal of the body. It also must be posted on the website of the public body if a website exists. Notice may also be sent to the news media if requested.
 - The notice must include an agenda, date, time and place. Upon a unanimous vote of the members present, the public body may take up a matter not on the agenda.

The Louisiana Legislature Sets its Own Procedures

- The Legislature may hold closed meetings:
 - To discuss confidential communications; the character, professional competence or health of anyone subject to employment, appointment or confirmation; strategy sessions or negotiations related to collective bargaining; prospective litigation; investigations that may elicit testimony of illegalities; cases of extraordinary emergency; the internal operations or management of either chamber; and any other matters provided by joint legislative rules.
 - Relevant agency statutes may also provide more exemptions.
- Each legislative chamber sets notice provisions for its committees and subcommittees.
 - 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 legislative day preceding the meeting.
 - Interim meeting (held between sessions) notices to be filed four days prior with the House clerk.
 - The Senate rules require:
 - Committee meeting notices to be posted on bulletin boards in the Senate and the House "as soon as practicable," but no later than 1 p.m. on the day preceding the meeting.
 - Interim meeting notices to be filed with the Secretary of the Senate.
- The Legislature also posts its meeting notices online at www.legis.la.gov

What If a Public Body Violates the Open Meetings Law?

- A person can file a complaint with the Louisiana attorney general (www.ag.state.la.us) or the local district attorney, who are both charged with enforcing the Open Meetings Law.
- The attorney general or district attorney can institute proceedings on their own, as well.
- An individual may file a lawsuit to require compliance with, prevent violations of, determine the applicability of or nullify any action taken in violation of the law. Attorney fees and costs of litigation may be awarded to the prevailing citizen.
- A member of a public body who participates in an illegal meeting may be penalized up to \$500 per violation. A lawsuit to collect such a penalty must be filed within 60 days of the violation.

Citizens' Rights Under the Louisiana Public Records Law

(R.S. 44:1-42)

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

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

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

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

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

- A written or electronically submitted request can provide documentation for subsequent action if the custodian denies the request. A sample request letter is available at www.parlouisiana.org.
- The record's custodian can ask questions about the documents being sought if unable to determine what records are requested.
- A custodian can refuse to provide information if the records request is deemed so large that it would "substantially disrupt required government operations" to fulfill, but only after making "reasonable attempts" to narrow the request.
- Fees can be charged under certain circumstances.
 - "Reasonable fees" can be charged for copies, though they are not required. State agencies usually charge 25 cents per page for regular-size paper documents.
 - There is no cost to see a public record in the office where it is kept during regular working hours.
- The record's custodian may ask for proof of age identification and whether the requestor is a felon. A felon in custody who has exhausted all appeals may only request certain records.
- The custodian may require the requestor to sign a register.

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

- If the record is in "active use," the agency must certify that in writing and set a day and an hour within three working days from receipt of the request when the record will be available.
- The custodian may delete the confidential portion of a record to make the remainder available.

Some Records Are Exempt From Production

- Louisiana exempts certain records of state and local agencies. Court rulings can also provide exemptions. Many kinds of records can be kept private because of the sensitive nature of the information in them. Examples of records that are exempt from release include:
 - Budget proposal research.
 - Criminal case investigation files.
 - Economic development negotiations.
 - Hospital and medical information.
 - Insurance, health and accident information.
 - Personally identifiable personnel information.
 - Trade secrets of companies and proprietary business information.
 - Records of financial institutions.

- Certain security records.
- For additional exceptions, see Louisiana Revised Statute 44:4.1.

Initial Police Reports Are Public Record

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

Records of the Governor Are Generally Public Record

- Records in the governor's office involving fiscal or budget matters are public.
- The governor's communication with internal staff is exempt from production but must be preserved and transferred to the state archives. Those documents become public record eight years after their creation.
- Scheduling records for the governor and the governor's spouse and children that contain security details can be held confidential for up to seven days following the scheduled event if the information is deemed to "impair" their safety. But that shall not be interpreted to make confidential all records concerning a meeting or event the governor attends and the transportation related to it.

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

- The custodian denying the record's release must provide written reasons within five working days and provide the legal reason for the decision.
- If a request is denied or five business days have passed without response since the initial request, the requestor may file a civil lawsuit. The courts must hear the plaintiff's petition quickly.
- If the requester prevails, the court shall award reasonable attorney fees and court costs. If the requestor prevails in part, the court may award reasonable attorney's fees and costs as it sees fit.
- Other penalties that may be imposed by a court:
 - The requester may receive up to \$100 each day if the custodian arbitrarily failed to give a written explanation of the reasons for denying the request. The requester also may receive actual damages if the custodian acted "arbitrarily or capriciously."
 - However, the custodian cannot be held personally liable if he or she acted on advice of counsel for the public body.
 - Anyone with custody or control of a public record who "arbitrarily and capriciously" violates the law or hinders the inspection of a public record may be fined from \$100 to \$1,000 or jailed for up to six months on a first conviction. The penalty escalates to a fine ranging from \$250 to \$2,000, imprisonment of up to six months or both on a second conviction.

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