

**CITIZENS' RIGHTS CARD  
ON OPEN MEETINGS AND  
PUBLIC RECORDS**

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This card explains your rights and responsibilities under Louisiana's open meetings and public records laws. The Louisiana Constitution states that "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)

**CITIZENS' RIGHTS UNDER THE  
OPEN MEETINGS LAW (R.S. 42:4.1-13)**

The Open Meetings Law was enacted to insure "that public business be performed in an open and public manner and that 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." The law must be construed liberally.

The law grants the public the right to attend and record the deliberations of public bodies including city and parish governing bodies; school boards; levee boards; port commissions; boards of public utilities; planning, zoning and airport commissions; other state, local or special district boards, commissions or authorities with policy making, advisory or administrative functions; and committees or subcommittees of those bodies. Judicial proceedings are exempted.

The Legislature is subject to parts of the open meetings law, but its own rules of procedure govern in most instances.

**Meetings That Must Be Open to the Public**

All meetings of public bodies must be open to the public unless closed for reasons permitted by the law and according to procedures set by the law. "Meeting" is defined as the "convening" of a majority of the total membership of a public body to deliberate, act or receive information on a matter over which the body has supervision, control, jurisdiction or advisory power. The law does not apply to chance meetings or social gatherings at which no vote or other action, including polling members, is taken.

A public body may not use proxy voting, secret balloting or any other means to circumvent the law. All votes by members of a public body must be "viva voce" (voice

vote) and be recorded in the minutes and other written proceedings.

All public bodies (except the Legislature and its committees) must provide an opportunity for public comment at meetings, subject to reasonable rules and restrictions adopted by the public body. A school board must allow public comment on each agenda item prior to taking a vote. Other state and federal laws specify instances wherein some public bodies must receive public input before acting. Anyone disrupting a public meeting “to the extent that orderly conduct of the meeting is seriously compromised” may be removed.

### **Notice and Minutes of Public Meetings Required**

At least 24 hours’ written public notice must be given for all regular, special or rescheduled meetings of public bodies except in cases of “extraordinary emergencies.” The notice may be posted at the office of the public body, or meeting place if there is no office, or published in the official journal of the public body. It must include the meeting agenda, date, time and place. Upon approval by two-thirds of the members present, the public body may take up a matter not on the agenda. The notice sent to members of the public body must be sent to members of the news media if requested.

If a public body’s regular meetings are fixed by state or local law, written public notice of these meetings must be given (showing the dates, times and places of the meetings) every January. All public bodies also must post a copy of the open meetings law.

The Legislature and its committees and subcommittees are not required to comply with the notice provisions applicable to other public bodies. The law does, however, direct each legislative house to adopt rules to provide for 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 legislative day preceding the meeting. The Senate’s rules require that its committee chairmen post such notices in the lobbies “as soon as practicable,” but no later than 1 p.m. on the day preceding the meeting. Committee chairmen of both houses 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. (Contact the Clerk of the House to subscribe.)

Public bodies must keep written public minutes of open meetings showing the substance of all matters decided. The minutes must also include the date, time and place of the meeting; a list of the members who were present and those who were absent; and, at the request of any member, a record, by individual member, of any votes taken. The minutes of meetings are public records.

Uncompensated private citizens’ advisory groups or committees established by a public body, except state textbook advisory committees, do not have to keep written minutes. Meeting notices for such groups must be provided by the parent public body.

## **Reasons for Closed Meetings (Executive Sessions)**

A public body may close a meeting to the public to: (1) discuss the character, professional competence or health of a person (except in emergency, the person must be given 24 hours' written notice), but in meetings other than those of the Legislature or its committees the person may require a public discussion; the exemption may not be used to discuss a person's appointment to a public body; (2) discuss strategy or negotiations regarding collective bargaining or prospective litigation after formal written demand, or litigation "when an open meeting would have a detrimental effect on the bargaining or litigation position of the public body" (an agenda must identify litigation to be discussed); (3) discuss security personnel, plans or devices; (4) investigate alleged misconduct; or (5) deal with "natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude."

To hold a closed meeting, two-thirds of the members present must vote in an open meeting to do so, and the minutes must show the reason for holding the closed session. Public bodies are not required to say how long they will be in an executive session. No final or binding action can be taken during a closed meeting. A closed meeting cannot be used "as a subterfuge to defeat the purposes" of the law.

The Legislature may hold closed meetings to discuss confidential communications; the character, professional competence or health of anyone subject to appointment or confirmation of appointment; investigations that may elicit testimony of illegalities; and any other matters provided by joint legislative rules. Also exempted are proceedings of certain state boards and discussions between a school board and a student or parents, unless they request a public discussion. Relevant agency statutes may also provide more exemptions to the open meetings law.

## **What To Do If A Public Body Violates the Law**

Anyone may file a complaint with the state attorney general or a district attorney against a public body believed to have violated the law. The attorney general may enforce the law in any jurisdiction in the state; a district attorney may enforce the law with respect to public bodies within his jurisdiction. Both officials may institute proceedings on their own initiative; they must institute suit upon receiving a complaint unless they give written reasons for not doing so. In addition, an individual may file a civil suit to require compliance with, prevent violations of, determine the applicability of, or nullify any action taken in violation of the law. A suit to nullify an action taken by a public body must be commenced within 60 days of the action.

If the court determines that a public body violated the law, it will award reasonable attorney fees and other costs of litigation to the plaintiff. If partially successful, the plaintiff may be awarded reasonable attorney fees or a portion thereof. If a suit is found frivolous and unjustified, the plaintiff may have to pay reasonable attorney fees of the

other party. A member of a public body who participates in an illegal meeting may be penalized up to \$100 per violation, which may be awarded to the plaintiff.

## **CITIZENS' RIGHTS UNDER THE PUBLIC RECORDS LAW (R.S. 44:1-41)**

Anyone 18 or older has the right to examine, copy or obtain a copy of a public record (unless specifically exempted) of any public body including any state, parish or municipal agency or board (including the Legislature). Public records requests may be submitted by mail (by court ruling). Generally anything "having been used, being in use or prepared" for use in the conduct of public business is a public record, regardless of physical form. Public records include such things as drafts of documents, statistics, maps, letters, memos, budget requests, budgets, tapes, electronic data, payrolls, certain retirement information, and tax assessment rolls.

### **Records Exempted**

The public records law exempts certain records of state and local agencies and cites all exemptions found in other state laws. Federal laws and court rulings provide additional exemptions. In general, exemptions are designed to prevent disclosure of confidential medical and personal information; proprietary and financial data of individuals and businesses (including tax returns and some information regarding occupational licensing); and selected records of financial institutions.

Exemptions in the state public records law include records pertaining to a legislative investigation in progress and certain records of prosecutive, investigative, law enforcement and correctional agencies or public health investigators. Some law enforcement records become public once relevant litigation is settled or a final judgment of conviction is made.

The following information in an initial police report is public record: a narrative description of the alleged offense; its time, date and location; 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 public record.

Other exemptions include nonfinancial records in the governor's custody as well as internal municipal auditors' working papers until the audit is completed. Certain public employee information is exempt including unlisted home phone numbers, home addresses and phone numbers (at employee's request), Social Security numbers, personnel evaluations (by court ruling), and medical, insurance and some retirement records. Attorney and expert work product done in preparation for trial is exempt.

(For additional detail and exemptions, see full text of the public records law, available from PAR.)

## **Exercising The Right to See a Public Record**

A request for a record should be as specific as possible. A written request can provide documentation for subsequent action if the custodian denies the request. (See sample request letter.)

No fees may be charged for inspecting records during regular business hours. A requester may be asked to pay in advance if overtime is required to make a public record available.

The custodian of a record may ask for identification and proof of age. He is also allowed to ask whether a requester is a convicted felon. (A convicted felon who has exhausted all appeals may only request certain records.) A requester may also be required to sign a register. The custodian must provide "all reasonable comfort and facility" for reviewing the record. A copy must be provided, if requested, although a reasonable fee may be charged. The law directs state agencies to charge 25 cents per page for standard size copies. Other public bodies may charge what they deem to be "reasonable." These charges vary significantly among public bodies. An attorney general opinion has recommended that custodians follow the state agency fee schedule.

If not in "active use" when requested, the record must be "immediately presented." The custodian is required to delete the confidential portion of a record and make the remainder available. If it is unreasonably burdensome or expensive for the custodian to separate the public portion of the record from the confidential portion, the custodian must provide a written statement explaining why. If the record is in "active use," the agency 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.

If the agency says the record requested is not in its custody, it must "promptly certify this in writing" and "state in detail" the reason for the record's absence, its location and who has custody.

## **Enforcing The Public Records Law**

A custodian who determines a record is not public, must provide written reasons, including the legal basis, within three working days. If a requester is denied a public record by a custodian or if five business days have passed since the initial request and the custodian has not responded, the requester may file a civil suit to enforce his right to access. The custodian bears the burden of proving that the record is not subject to disclosure because of either privacy rights or a specific exemption. The law requires the courts to act expeditiously in such suits and to render a decision "as soon as practicable."

If the requester prevails in the suit, the court will award reasonable attorney's fees and other costs. If the requester partially prevails, the court may, at its discretion, award reasonable attorney's fees or an appropriate portion thereof. (The custodian and the public body may each be held liable for the payment of the requester's attorney's fees

and other costs of litigation; however, the custodian cannot be held personally liable for these fees and costs if he acted on advice from a lawyer representing the public body.)

The court may also award the requester civil penalties of up to \$100 for each day the custodian arbitrarily failed to give a written explanation of the reasons for denying the request. In addition, if the court finds that the custodian arbitrarily or capriciously withheld a public record, it may award actual damages proven by the requester to have resulted from the custodian's action. (The custodian may be held personally liable for the actual damages unless his denial of the request was based on advice from a lawyer representing the public body.)

In addition to civil remedies, the law also provides criminal penalties. Anyone with custody or control of a public record who violates the law or hinders the inspection of a public record will be fined \$100 to \$1,000, or imprisoned for one to six months upon first conviction. For a subsequent conviction, the penalty is a fine of \$250 to \$2,000 or imprisonment from two to six months, or both.

### **Sample Letter to Request Public Records**

Dear Custodian of Public Record(s):

Pursuant to the Public Records Act of Louisiana, R.S. 44:1 et seq., I/we request the following public records be made available for inspection and/or copying:

[List either specific document(s) you are requesting or if you don't know, describe the information you are requesting as specifically as possible.]

Under the provisions of R.S. 44:32, if you raise a question as to whether the record requested is a public record, you are required to notify in writing the person making the request of your determination and the reasons, including the legal basis, therefor. Said notice shall be made within three days of the receipt of the request, exclusive of Saturdays, Sundays, and legal public holidays.

Under the provisions of R.S. 44:33, if the public record is not immediately available you are required to certify this in writing promptly, and in your certificate fix a day and hour within three days, exclusive of Saturdays, Sundays, and legal public holidays, for the exercise of the right granted in the Public Records Act.

Under R.S. 44:34, "If any public record applied for by any authorized person is not in the custody or control of the person to whom the application is made, such person shall promptly certify this in writing to the applicant, and shall in the certificate state in detail to the best of his knowledge and belief, the reason for the absence of the record from his custody or control, its location, what person then has custody of the record and the manner and method in which, and the exact time at which it was taken from his custody or control. He shall include in the certificate ample and detailed answers to inquiries of

the applicant which may facilitate the exercise of the right granted by this Chapter.”

If you are invoking R.S. 44:34 to deny this request, please answer the following questions in detail.

1. Is a copy of the requested public record usually located in your office?
2. Why is your copy of the requested public record absent from your office?
3. Where is your copy of the requested public record?
4. Who has received your copy of the requested public record?
5. How and from whom did the present custodian gain control of your copy of the requested public record?
6. What was the exact time your copy of the requested public record was taken from your custody and control?
7. When will your copy of the requested public record be returned to your office?
8. Is there any other public official who has a copy of the requested public record?
9. State the name or names of anyone who has a copy of the requested public record?
10. State the location(s) where the requested public record can be viewed.
11. State the hours and dates when the requested public record can be viewed.

Penalties for violating the Public Records Act include criminal prosecution.

Thank you for your assistance.