

**Date**

October 21, 2021

Time

8:30 am – 10:00 am

Instructor

Patrick Virgadamo, CFE
Senior Attorney

Location

Virtual

Method of Delivery

Webinar

Learning Level

Basic

CPE Hours

1.5 Hours

CPA Subject Matter

Specialized Knowledge

Yellow Book Subject Matter

Governmental

Prerequisite

None

Open Meetings and Public Records

Description

This course is intended to help participants to understand and explain the nuances and laws concerning the Open Meetings Law and Public Records Law that they are responsible for abiding by and upholding in the carrying out of their duties as a servant of the public in the State of Louisiana.

Objectives

After this class, participants will be able to:

- Define the general requirements of the Open Meetings Law including Executive Sessions, Virtual Meetings, and Special Notice Provisions
- Define and identify public records, common exceptions and the duty of custodian of public records

Who Will Benefit


- Elected/Appointed Officials their staffs and Auditors

About the Instructor

PATRICK VIRGADAMO, CFE, SENIOR ATTORNEY

Patrick Virgadamo, CFE is a Senior Attorney for the Office of the Louisiana Legislative Auditor (LLA). He is a graduate of McNeese State University (B.A. 2004), Louisiana State University (M.A. 2009), and the LSU Paul M. Hebert Law Center (J.D. / G.D.C.L. 2009). During law school, Patrick served on the Law Center's Constance Baker Motley National Moot Court Competition Team and externed for a semester with the Honorable Judge Robert Downing (Ret.) of the Louisiana First Circuit Court of Appeal. Patrick began his career at the LLA as a law clerk in May of 2008, before joining the LLA full-time as a Staff Attorney in August of 2009. In November, 2015, Patrick assumed his current role as Senior Attorney. Patrick is licensed as a practicing attorney before the Louisiana State Bar and the Eastern, Western, and Middle U.S. Districts of Louisiana. In his capacity as attorney with the Legislative Auditor, Patrick has researched and written opinions on numerous and various questions facing the Auditor's Office, state and local officials, and public entities in general, which arise every day. Patrick is certified as a state agency ethics liaison and Certified Ethics Trainer with the Louisiana Board of Ethics. Patrick serves as an instructor for the LLA's Center for Local Government Excellence. Patrick is also a Certified Fraud Examiner (CFE) and member of the Association of Certified Fraud Examiners. Patrick has also worked extensively with the LLA's Human Resources Services (HR), where he has assisted HR and the General Counsel in addressing HR-related questions and in drafting and implementing numerous LLA internal policies such as the LLA's Crisis Leave, Military Leave, Telecommuting, Cybersecurity Training, Sexual Harassment, and Professional Development policies.

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Open Meetings and Public Records



Michael J. "Mike" Waguespack CPA
Louisiana Legislative Auditor

Presented by
Patrick Virgadamo
Senior Attorney

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Article XII, §3



- "No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law."
- Foundation for the Open Meetings Law and Public Records Law often called the "**Sunshine Laws.**"

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The graphic shows three whiteboards on a blue stand. The central whiteboard has the text "Open Meetings" written on it in blue and black. The top right corner of the slide features the Center for Local Government Excellence logo, which includes a circular emblem with a building and the text "Center for Local Government Excellence" and "AUDITOR".

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Course Objectives



The target graphic is a red bullseye with a red arrow hitting the center. The word "OBJECTIVES" is written across the target in a bold, white, sans-serif font.

- **Open Meetings Law**
 - Definitions
 - General Requirements
 - Executive Sessions
 - R.S. 42:17.1 Exception
 - Special Notice Provisions
 - Violations
 - Recent Attorney General Opinions



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Open Meetings Law

R.S. 42:11, et seq.




- The provisions of the **Open Meetings Law** shall be construed liberally in favor of public observation and participation in the deliberations and decision making of public policy.
- A copy of the **Open Meetings Law** statutes are required to be posted by all public bodies.

R.S. 42:12


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Open Meetings



Definitions:

- Meeting
- Public Body
- Quorum



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Open Meetings



Meeting

- Gathering:
 - To deliberate or act on a matter over which the public body has supervision, control, jurisdiction, or advisory power.
 - 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.

Does not include chance meetings or social gatherings at which no vote or other action is taken, such as formal or informal polling of members; however, such gatherings should be avoided if possible.

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Open Meetings



Public Body includes:

- Municipal governing authorities;
- Parish governing authorities;
- School Boards;
- Levee Boards and Port Commissioners;
- Boards of Publicly Operated Utilities;
- Planning, Zoning, and Airport Commissions;
- Any other State, Parish, Municipal, or Special District boards, commissions, or authorities, and those of any political subdivision thereof which has policy making, advisory, or administrative functions; and
- Any committee or subcommittee of any of the above.

Nominating committees for appointments to public entities are generally considered a "public body" for purposes of the Open Meetings Law. AG Op. No. 16-0093

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Open Meetings



Quorum

■ A simple majority of the total membership of a public body

- Often incorrectly identified as 50% +1.
- Specific statutory definition of quorum for a public body can be higher or lower than the default definition.
- Vacant positions count in determining quorum.
- Public bodies should be aware that violations often occur when discussions happen through a **“walking quorum.”**

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Open Meetings Law



■ General Requirements

- Open to Public
- Voting Procedures
- Notice
- Agenda
- Minutes
- Public Participation/Commenting

■ Executive Sessions

■ R.S. 42:17.1 Exception

■ Special Provisions




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Open Meetings



■ Every meeting of a public body must be open to the public unless the law specifically provides an exception such as executive sessions under R.S. 42:16, R.S. 42:17, or R.S. 42:18.

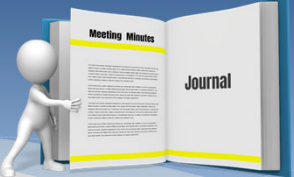

R.S. 42:14(A)

Note: Exceptions may also be found elsewhere in the law.



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Open Meetings





Voting

- Must be physically present and viva voice (oral or electronic machine displaying vote and identifying who cast the vote).
- May not utilize proxy voting unless the law specifically authorizes it.
- Secret Balloting, Straw Polling, and other means of circumventing a public vote are strictly prohibited.
- All votes shall be recorded in the minutes, journal, or other official, written minutes of the body.
- Public commenting must be afforded prior to action being taken on an item.

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Open Meetings




Notice

- **Public Entity must provide written public notice of all of its meetings**
 - Written **notice** for regular meetings established by law, resolution, or ordinance must be given at the beginning of each calendar year.
 - Written **notice** must also be given no later than 24 hours, exclusive of weekends and legal holidays, before any regular, special, or rescheduled meeting.
 - A copy of the **notice** must be placed at least 24 hours, exclusive of weekends and legal holidays, prior to the meeting:
 - At the place of the meeting or the official office of the body, or
 - Published in the official journal of the public body

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Open Meetings





Notice (Continued)

- **Public Entity must provide written public notice of all of its meetings**
 - If the public body has a website, a copy of the **notice** must also be posted on the website no less than 24 hours, exclusive of weekends or legal holidays, immediately preceding the meeting.
 - Mail a copy of the written **notice** to members of the news media who requests notice of meetings.

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Open Meetings




Notice (continued)

■ **The written notice must contain:**

- Date, Time, and Location
- Copy of the Agenda; and
- If an executive session will be held regarding a strategy session or negotiations for collective bargaining or litigation, the following must also be attached:
 - Statement identifying court, docket number, and parties relative to pending litigation; or
 - Statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation for which formal written demand has been made.


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Open Meetings





Agenda

- Descriptive language;
- Each item shall be listed separately;
- Presiding officer shall read aloud a description of the item prior to action being taken;
- No changes made within 24 hours, exclusive of weekends and legal holidays, preceding the meeting;



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Open Meetings





Agenda (continued)

- The public body may adopt policy addressing the placement of items on the agenda, but must comply with the timelines set forth for notice under the Open Meetings Law and those for the introduction and passage of ordinances and resolutions;
- The public body may amend the agenda and take up additional matters during the meeting, but shall do so only after a unanimous vote of members present. **This requirement may not be reduced through ordinance, policy or charter provision;** and
- Absent an ordinance, policy or charter provision to the contrary, the public body may withdraw, table, or otherwise remove items on the agenda by a majority vote of those present.

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Open Meetings





Minutes

- Must keep written minutes of all open meetings
 - Often Legal duty is prescribed to the Secretary, Clerk, etc.
- Must include:
 - Date, time, and place of meeting;
 - Members of the public body recorded as present or absent;
 - The substance of all matters decided, and at the request of any member, a record, by individual member, of any votes taken; and
 - Any other information that the public body requests be included or reflected in the minutes.

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Open Meetings



Minutes (continued)

- Minutes are a public record and must be made available within a reasonable time after the meeting, except as otherwise provided for by law.
- Municipalities, Parish Governing Authorities, School Boards, and other political subdivisions are required to publish their minutes in their official journal according to R.S. 43:143 or R.S. 43:171.
- If the public body has a website, they must publish their minutes online within 10 days from their publication in the official journal and must be maintained online for at least 3 months.
- If the public body is not required to publish its minutes in an official journal, then it must post the minutes online within a reasonable time after the meeting.

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Open Meetings



Public Participation/Commenting

- Public entities shall afford a public commenting period in all meetings prior to action being taken on agenda items which require a vote.
- **School boards must afford a separate public commenting period prior to action on each individual agenda item.**

R.S. 42:14(D) & R.S. 42:15(A)

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Open Meetings



Public Participation/Recording

- All of the proceedings in a public meeting, with the exception of proceedings held in an executive session, may be video or tape recorded, filmed, or broadcast live.
 - The public entity shall establish standards for the use of lighting, recording or broadcasting equipment to ensure proper decorum in the meeting.
- Minutes need not be verbatim but should provide sufficient description to a reader as to what matters were considered, the outcome of votes, and identify that all legal procedures were complied with on taking up and adopting the matter.

R.S. 42:23

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Open Meetings



Public Participation/Recording (continued)

- Nonelected boards or commissions which have the authority to levy a tax shall video or audio record, film, or broadcast live all proceedings of their public meetings, except for those as part of an executive session.
 - **R.S. 33:9099.2**, enacted by Act 338 of the 2014 Regular Session, exempts the governing authorities of crime prevention and security district, improvement district, or other districts created by or pursuant to Chapter 29 of Title 33 of the Revised Statutes from the requirements of R.S. 42:23(A), which otherwise would require an unelected board with the power to levy taxes to record the proceedings of their minutes.



R.S. 42:23

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Executive Sessions

- **Public body** may only hold a closed executive session for one of the matters authorized under R.S. 42:17 or as otherwise provided for by law.
- Notice of the **public body's** intention to enter into executive session on a matter should be clearly noted in the agenda and written notice.
- **Public body** is required to vote to enter into executive session through a two-thirds vote of members present and the vote and the reason(s) for entering into executive session shall be entered into the minutes.
- No votes or final determinations shall be made while the **public body** is in executive session.

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Executive Sessions (continued)

- **Executive sessions are authorized under R.S. 42:17 for the following reasons:**
 - Discussion of the character, professional competence, or physical or mental health of a person, except in regard to appointment of the individual to a public body or discussing the award of a public contract, or if the individual requires that the discussion be public;
 - Strategy sessions or negotiations with respect to 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;

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Open Meetings




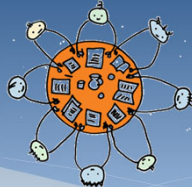
Executive Sessions (continued)

- Discussion regarding the report, development, or course of action regarding security personnel, plans, or devices, including discussions concerning cybersecurity plans, financial security procedures & assessment/implementation of same. Act 66 of 2021
- Investigative proceedings regarding allegations of misconduct;
- Cases of extraordinary emergency, which is limited to natural disasters, threats of epidemics, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude;



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Open Meetings



Executive Sessions (continued)

- Certain meetings of the State Mineral and Energy Board;
- Discussions between a city or parish school board and the individual students or parents/tutors of students of the school system regarding problems of the students or their parents/tutors, unless the parent/tutor or student require the discussion to be public;
- Presentations and discussions at meetings of civil service boards of test questions, answers, and papers produced and exhibited by the office of the state examiner, municipal fire and police civil service;

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Open Meetings




Executive Sessions (continued)

- Certain portions of meetings of the Second Injury Board regarding settlement of workers' compensation claims; or
- Other matters as provided for by the Legislature.
 - Hospital Service Districts may enter into executive sessions regarding discussions concerning their marketing and strategic planning under the Enhanced Ability to Compete Act, R.S. 46:1071, et seq.



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Open Meetings



Exception – R.S. 42:17.1 Act 302 of 2020

- A public body may conduct and its members may attend and participate in a meeting via electronic means (telephone or video conference) provided *all* of the following occur:
 - (1)The governor has declared a state of emergency or disaster involving a geographic area within the jurisdiction of the public body and the nature of the emergency or disaster would cause a meeting of the public body conducted pursuant to the open meetings law to be detrimental to the health, safety, or welfare of the public.

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Open Meetings



Exception – R.S. 42:17.1 (Continued)

- (2) The presiding officer of the public body certifies on the notice of the meeting that the agenda of the meeting is limited to one or more of the following items:
 - ❖ (a) A matter directly related to the public body's response to the disaster or emergency and which is critical to the health, safety, or welfare of the public.
 - ❖ (b) A matter that, if they are delayed, will cause curtailment of vital public services or severe economic dislocation and hardship.
 - ❖ (c) A matter that is critical to continuation of the business of the public body and that is not able to be postponed due to a legal requirement or other deadline that cannot be postponed or delayed by the public body.
 - ❖ (d) Other matters that are critical or time-sensitive and that in the determination of the presiding officer should not be delayed; however, such matters shall not be considered at the meeting unless the members of the body present at the meeting approve the consideration of the matters by a two-thirds vote. (Act 43 of 2020 2nd Ex. Sess.)

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Exception – R.S. 42:17.1 (Continued)

- (3) No later than 24 hours prior to a meeting conducted under new law the public body shall provide for all of the following:
 - ❖ (a) The notice and agenda for the meeting shall be posted on the website of the public body, emailed to any member of the public or the news media who requests notice of meetings of the public body, and widely distributed to every known news media outlet that broadcasts or publishes news within the geographic area within the jurisdiction of the public body.
 - ❖ (b) Detailed information regarding how members of the public may participate in the meeting and submit comments regarding matters on the agenda, which information shall be posted on the website of the public body, emailed to any member of the public or the news media who requests notice of meetings of the public body, and widely distributed to every known news media outlet that broadcasts or publishes news within the geographic area within the jurisdiction of the public body.

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Open Meetings

Exception – R.S. 42:17.1 (Continued)

- The telephone or video conference meeting under this exception must be conducted as follows:
 - ❖ The public body shall provide a mechanism to receive public comment electronically both prior to and during the meeting.
 - ❖ The public body shall properly identify and acknowledge all public comments during the meeting and shall maintain those comments in its record of the meeting.
 - ❖ The presiding officer of the public body shall ensure that each person participating in the meeting is properly identified.
 - ❖ The presiding officer shall ensure that all parts of the meeting, excluding any matter discussed in executive session, are clear and audible to all participants in the meeting including the public.

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Open Meetings

Certification of Meeting Conducted Pursuant to La. R.S. 42:17.1

In accordance with R.S. 42:17.1 this notice shall serve as certification of the [public entity's] inability to otherwise operate in accordance with the Louisiana Open Meetings Law due to such a meeting being detrimental to the health, safety, and/or welfare of the public as a result of the public health emergency, as declared by Governor _____ on [date] by [governor's emergency proclamation number].

The [public entity] will provide for attendance at its essential government meeting on [date] via [video or telephone] conference. It is essential that the [public entity] continue to operate to address [matters directly related to its response to the disaster or emergency and/or matters that if delayed will cause a curtailment of vital public services or severe economic dislocation and hardship and/or matters that are critical to the continuation of its business and that are not able to be postponed due to legal requirements and/or other matters that presiding officer has determined are critical or time-sensitive].

Considering the foregoing, and in accordance with R.S. 42:17.1 and [governor's emergency proclamation number], the [public entity's] meeting on [date] at [time] will be held via [video or telephone] conference and in a manner that will allow for observation and input by members of the public, as set forth below:



The meeting may be observed at [meeting access information]. Members of the public may submit public comment on an agenda item [describe method such as use of chat box during meeting, or by sending an email to [email address] or leaving a voicemail at [phone number] no later than [time] on [date]]. All public comments will be properly identified and acknowledged during the meeting.

Certified this ___ day of ___, 20__.

Signature of Agency Head/
Chief Executive Officer

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Open Meetings





Special Provisions (Taxes)

- R.S. 42:19.1 provides for additional notice requirements which must be undertaken when a public body seeks to levy a new ad valorem property tax or sales and use tax, or increase or renew any existing tax, or authorize the calling of an election for submitting of such question to the voters.
- Written public notice must be published in the official journal no more than 60 days nor less than 30 days prior to the meeting and announced during the course of a public meeting.
- Notice must provide the date, time, and location.
- If cancelled or postponed, an additional notice of the new meeting must be published at least 10 days prior to the new meeting.

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Open Meetings





Special Provisions (Continued)

- Additional notice must be provided through hand delivery or email to each voting member of any governing authority of a political subdivision that is required to approve tax related measures previously adopted by another governing authority and to each state senator and representative in whose district all or a portion of the political subdivision is located.
- No additional notice is required for meetings, subsequent to adoption of a tax, in which the only action taken is to either reduce the rate or term of the tax and thereby reduce the total amount of the tax to be collected or substantially reduce the cost to the political subdivision of any bond or debt obligation incurred by the political subdivision.
- Does not apply to “roll forward” actions which have their own notice provisions under R.S. 47:1705(B)(2)(c)&(d).

<http://www.la.gov/assessorsMillages/>

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Open Meetings





Violations

- Actions taken in violation of the Open Meetings Law may be voidable if legal action is commenced within 60 days of the action
- Civil Penalties of up to \$100 per violation may also be assessed, as a personal liability of the violator

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Open Meetings




AG Opinions

AG Op. No. 19-0128 - The AG discusses the Open Meetings Law regarding permissible and prohibited communications between board members outside of a public meeting.

AG Op. No. 19-0145 - Under the provisions of R.S. 42:17(D) a working group created by a public body that is composed of uncompensated citizens and serves only to advise the public body is subject to the Open Meetings Law but is exempted from the provisions of R.S. 42:19 (notice requirements) and 42:20 (written minutes).

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Open Meetings




AG Opinions

AG Op. No. 19-0022 – The Louisiana Open Meetings Law mandates that all votes be made *viva voce* (Latin for “by word of mouth; orally”) and recorded in the minutes or written proceedings of the meeting. All votes made by a member of a public body must be made orally or by mouth. As such, voting by a show of hands alone is in violation of this requirement but voting machine is acceptable.

AG Op. No. 17-0026 - A public body is not permitted to circumvent the open meetings law by deliberating informally to make decisions. Such deliberations must be open to the public. Therefore, the review committee created by the City of Mandeville consisting of the Planning Director and design consultants which meet to (1) consider architectural reviews of applications for building permits and (2) consider applications for changes to buildings in the city’s historic district is a committee created by the public body which must comply with the Open Meetings Law.

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Open Meetings



AG Opinions


AG Op. No. 16-0170 – The committees of a political subdivision, including those which are advisory in nature, are subject to the Open Meetings Law.

AG Op. No. 16-0167 – As the publication and notice requirements of Article VII, §23(C) and R.S. 47:1705 were met prior to holding its public hearing for a roll-forward millage, the school board’s subsequent re-vote with public comment approving the resolution to adopt the roll-forward millage at a subsequent meeting was valid. The subsequent vote with public comment cured any defects from the vote on the resolution at a prior meeting at which public comment was not provided in violation of the Open Meetings Law.

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Open Meetings

Legal Opinions



AG Opinions


AG Op. No. 16-0093 – The AG discusses the issues surrounding whether a nominating committees and other similar bodies are a “public body” within the meaning of the Open Meetings Law.

AG Op. No. 16-0075 – An ordinance not on the agenda and not an emergency must be placed on the agenda unanimously by the governing authority prior to it being voted on.

La. R.S.42:19(A)(1)(b)(iii)(cc)).

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Open Meetings

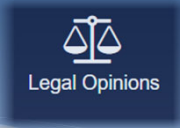


AG Opinions


AG Op. No. 15-0122 – A Lawrason Act municipality may adopt a procedure for governing its meetings that allows individual council members to place items on the agenda, provided such a request complies with the timelines set forth in the ordinance and the notice provisions of the Open Meetings Law. Further, as the Open Meetings Law requires unanimous approval of the members present to add an item to the agenda, in no case may a municipality, by ordinance, lessen this requirement to a majority vote. Finally, the Open Meetings Laws does not require unanimous approval of all members present to withdraw an item from the agenda.

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Legal Opinions



AG Opinions

AG Op. No. 14-0065 – The AG discusses the restrictions against the polling of a majority of members of a public body and regarding the private messaging between members of a public body during a public meeting.

AG Op. No. 14-0172 – The AG discusses the “reasonable specificity” requirements under R.S. 42:19 in regard to description of agenda items, and the use of the term “Discuss other matters properly brought before this committee” regarding public discussion of potential future agenda items.

AG Op. No. 13-0221 – The AG discusses who is responsible for preparing the agenda for a town meeting and the requirements for public comment periods.



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Public Records


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Public Records Law



R.S. 44:1, et seq.

The provisions of the
Public Records Law
shall be interpreted liberally
in favor of public review




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Public Records Law





Definitions:



- Public Record
- Public Body
- Custodian

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Public Records Law



Public Record:

- 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 documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment:

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Public Records Law

**Public Record:
(Continued)**

- Used, being used, or prepared, possessed, or retained for the use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which has been conducted, transacted, or performed by or under the authority of:
 - The Constitution or laws of the State;
 - Any ordinance, regulation, mandate, or order of any public body; or
 - Receipt or payment of any money received or paid by or under the authority of the Constitution or laws of this State.
- **The list of items enumerated is illustrative not exclusive.**

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Public Records Law

A Public Record is Basically:

- Anything that is created, prepared, possessed, or retained as a result of a duty or function carried out under the authority of the Constitution, Statutes, Ordinance, Regulation, Mandate, or Order of a public body, **OR**
- Anything related to the receipt or payment of money received or paid by or under the authority of the Constitution or laws of the State.


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Public Records Law




Public Body:

- Any branch, department, office, agency, board, commission, district, governing authority, political subdivision, or any committee, subcommittee, advisory board, or task force thereof;
- 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; or
- An affiliate of a housing authority.




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Public Records Law




Custodian:

- The Public official or head of any public body having custody or control of a public record; or
- A representative specifically authorized by him/her to respond to requests to inspect any such public records.



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Public Records Law



Duty of Custodian of Public Records


- Maintaining and Preserving Public Records;
and;
- Responding to Public Records Requests

It is highly recommended that Public Bodies work with their legal counsel in responding to public records requests.




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Public Records Law





R.S. 44:33.1 mandates that public bodies make information concerning their custodian of records publicly available and posted on the internet.



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Public Records Law





Exceptions

The Public Records Law provides various exceptions, exemptions, and limitations to the Public's Right of Access and Review of Public Records;

- **R.S. 44:4** provides that various documents or records are exempted from application of the Public Records Law;
- **R.S. 44:4.1** incorporates by reference statutory exceptions to the Public Records Law, the Attorney Client Privilege, and Work Product Privilege;
- **In order for a statutory exception to the Public Records Law to be effective, it must be included within the Public Records Law, the Constitution, or incorporated by reference in R.S. 44:4.1.**
- Provisions of the Louisiana Constitution, such as the Right to Privacy, may also provide additional exceptions, exemptions, or limitations to the Public's Right of Access to Records.

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Public Records Law





Notable Exceptions

- Records concerning pending criminal litigation or criminal investigations
- Proprietary and Trade Secret Information
- Blueprints or Floorplans of Public School Buildings
- Hospital/Health Related Records (HIPAA)
- Personnel Records
- Tax Returns
- Student Records (FERPA)

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Public Records Law





Maintaining Public Records **R.S. 44:36***

- All public entities or persons having custody or control of public records shall preserve documents for the period of time specified by law for such public records.
- Where the law does not specify a particular period, public records shall be preserved at least three years from the date on which the public record was made, except where an agency, as defined in R.S. 44:402, has an approved records retention schedule developed and approved by the Secretary of State's Office pursuant to R.S. 44:411.
- Recordings of Public Meetings required under R.S. 42:23 shall be preserved and maintained for at least 2 years from the date on which the public record was made.

* Amended by **Act 213** (SB 146) of the 2021 Regular Session, **Effective June 11, 2021**

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Public Records Law




Responding to Public Record Requests

Who can request a public record?

- **Any person of the age of majority (18 or older) may inspect, copy, or reproduce any public record.**
 - Does not include individual in custody, post-sentencing for a felony conviction, who has exhausted their appellate remedies and the record requested is not limited to certain grounds under which post conviction relief can be obtained.
 - Exclusion does not extend to attorney for such incarcerated person. *Boren v. Taylor*, 16-2078 (La. 6/29/17), 223 So.3d 1130.
- Any person may obtain a copy or reproduction of any public record.
- The custodian has the burden of proving that a public record is not subject to inspection, copying, or reproduction.

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Public Records Law



Responding to Public Record Requests

- The custodian shall not make any inquiry of any person requesting a public record, including the reasons for the request.
- The custodian may however ask to verify the age and identification of the person, and may require the person to sign a register.
- The request may be in person or in writing, and need not include the specific name or type of document requested. A reasonable description of information sought is sufficient.

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Public Records Law





Responding to Public Record Requests

What may be charged for copies of public records?

- ***The custodian may charge a reasonable fee for providing copies of public records, but may not charge for any in person inspection of records during regular office or working hours.***
 - State Agencies are required to comply with the Uniform Fee Schedule for Copies of Public Records found in Section 301 of Title 4, Part I of the Louisiana Administrative Code.
 - Local political subdivisions may utilize this schedule in determining a reasonable fee, but are otherwise free to develop their own fee schedules.
 - Clerks of Courts have their own civil fee rules under R.S. 13:841.

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Public Records Law



Responding to Public Record Requests



Charges for Copies

AG Op. No. 15-0056

A public entity may not consider the original costs incurred in creation of a record or the value of the record in establishing a “reasonable fee” but must consider, at the very least, the costs incurred in making the copy requested.

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Public Records Law




Responding to Public Record Requests

How long does a custodian have to respond to a public records request?

- If the public record requested is not currently in use and is available for inspection, the custodian must allow for immediate examination of the record.
- The custodian however has an obligation to segregate out any non-public or confidential information prior to providing copies or allowing examination of a public record.
- If the record requested is not immediately available or is currently in use, then the custodian shall certify the unavailability of the record to the requestor **in writing** and fix a day and hour within 3 days, exclusive of weekends or legal holidays, from the receipt of the request at which time the requestor may examine the record.

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Public Records Law




Responding to Public Record Requests

What if the custodian does not have the record requested?

- The custodian must certify in writing that they do not have the record requested in their possession, citing why the record is not currently under their possession or control, the current location of the record, who has the current custody or control of the record, and the exact time at which the record was taken from their custody or control, to the best of their knowledge and belief.

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Public Records Law





Responding to Public Record Requests

What if the custodian believes that the requested record is not a public record?

- The custodian shall within three days, exclusive of weekends and legal holidays, from receipt of the request notify the requestor in writing their determination that the requested record is not public and shall reference the basis under the law which the custodian has determined exempts the record, or any part of the record from inspection, copying, or reproduction.

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Public Records Law



Denial of Public Record Request

What may a requestor do if they are denied a public record?

Any person who has been denied the right to inspect, copy, reproduce or obtain a public record under the Public Records Law, by either:



- Determination of the Custodian; or
- Passage of (5) days exclusive of weekends and legal holidays from the date of request without determination or estimate of time from custodian.

May institute a lawsuit in the district court for the parish where the custodian is located seeking a writ of mandamus, injunctive or declaratory relief, attorney's fees, costs and damages as provided for by law.

R.S. 44:35

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Public Records Law



Penalties for violations of the Public Records Law possibly include:

- Actual Damages;
- Civil Penalties*, not to exceed \$100/day (excluding weekends & legal holidays);
- Attorney fees and costs of litigation to enforce rights under the Public Records Law; and
- Possibility for personal liability for custodian.

*Civil penalties are provided for only when the records custodian unreasonably or arbitrarily fails to respond; whereas actual damages may be awarded where a custodian unreasonably or arbitrarily fails to respond and/or withholds a public document requested. *Aswell v. Division of Administration, State of Louisiana*, 2015-1851 (La. App. 1 Cir. 6/3/16); 2016 WL 3126138.

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2021 Regular Session



Act 213 (SB 146) – **Effective June 11, 2021**

- ❖ Amends the Public Records Law to clarify the retention of public records and digitization of public records.

Act 169 (HB 120) – **Effective June 11, 2021**

- ❖ Enacts R.S. 44:3.6, which provides that blueprints, floor plans, and renderings of the interior of an airport facility, a facility on airport property, or of airport infrastructure shall be confidential and exempt from public inspections, examination, copying, or reproduction.



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2021 Regular Session



Act 231 (HB 373) – **Effective June 11, 2021**

- ❖ Enacts R.S. 44:4.1(B)(35) and R.S. 51:2113(E), which exempt and make confidential the registration information of any provider that manages a public body's information technology structure, security, or end-user systems in the state as required to be filed with the Secretary of State pursuant to R.S. 51:2113.

Act 456 (SB 86) – **Effective June 23, 2021**

- ❖ Exempts and makes confidential the recordings from cameras placed in special education classrooms upon parental request pursuant to R.S. 17:1948.




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2021 Regular Session




Act 283 (SB 66) – **Effective August 1, 2021**

- ❖ Enacts R.S. 44:4(59), which exempts from disclosure any records, files, documents and communications, and information contained therein, that are created, received, or maintained by or in connection with a peace officer and public safety officer peer support program or session conducted by a trained peer support member.
- ❖ This also exempts any such records created, received, or maintained by the Louisiana Commission on Law Enforcement and Administration of Criminal justice relating to the personal information of approved peer support members.

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Recent AG Opinions



❖ Addresses the application of the Public Records Law on the records of completed internal affair investigations of law enforcement officers.

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LOUISIANA LEGISLATIVE AUDITOR
Michael J. "Mike" Waggonpack, CPA

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The Legal Section participates in the mission of LLA by providing written and oral opinions. These opinions relate to audit matters and are tendered to staff auditors, independent CPAs, and public officials. During the Legislative Session, the Legal Section tracks legislation regarding audit issues. To speak directly with a legal professional, please call 225-339-3871.


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Public Records Law

Time for Questions

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