

OPEN MEETINGS AND PUBLIC RECORDS

PREPARED BY EMALIE BOYCE, ASSISTANT ATTORNEY GENERAL
LOUISIANA CITY ATTORNEY'S ASSOCIATION 2010 FALL CONFERENCE
OCTOBER 8, 2010

CONSTITUTIONAL BASIS FOR RIGHT OF ACCESS

- Article XII, Section 3 of the 1974 Louisiana Constitution, titled the Right to Direct Participation, provides: No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.

PUBLIC RECORDS LAW

APPLICABLE LAW

- Title 44 of the Louisiana Revised Statutes includes relevant definitions, describes the right of access and details exceptions to disclosure.
- Relevant to Exceptions is La. Const. Art I, §5 Right to Privacy: Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court.

PURPOSE AND INTERPRETATION

- The Public Records Law was enacted to implement the inherent right of the public to be reasonably informed as to the manner, basis, and reasons upon which governmental affairs are conducted. *United Financial Service of Baton Rouge v. Guste*, 555 So.2d 561, 563 (La.App. 1 Cir. 1989).
- Statutes providing for public access must be liberally interpreted so as to extend rather than restrict access to public records. *Bartels v. Roussel*, 303 So.2d 833 (La.App. 1 Cir. 1974).
- The right of the public to have access to the public records is a fundamental right, and is guaranteed by the constitution. La. Const. art. XII, §3. The provision of the constitution must be construed liberally in favor of free and unrestricted access to the records, and that access can be denied only when a law, specifically and unequivocally, provides otherwise. *Id.* Whenever there is doubt as to whether the public has the right of access to certain records, the doubt must be resolved in favor of the public's right to see. To allow otherwise would be an

Emalie A. Boyce

Emalie A. Boyce is an Assistant Attorney General with the Department of Justice, where her areas of practice include public records and open meetings. She received a B.A. degree from American University, a M.F.A. degree from New Mexico State University, and a B.C.L. and J.D. from Louisiana State University Paul M. Herbert Law Center.

improper and arbitrary restriction on the public's constitutional rights. *Title Research Corp. v. Rausch*, 450 So.2d 933, 936 (La. 1984).

DEFINITIONS, LA RS 44:1

- **"Public Body"** means "any branch, department, office, agency, board, commission, district, governing authority, political subdivision, or any committee, subcommittee, advisory board, or task force thereof, or any other instrumentality of state, parish, or municipal government, including a public or quasi-public nonprofit corporation designated as an entity to perform a governmental or proprietary function."
- **"Public Records"** include "All books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, **regardless of physical form or characteristics, including information contained in electronic data processing equipment**, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state...except as otherwise provided in this Chapter or the Constitution of Louisiana."
- Notwithstanding the definition of "public record" above, any documentary material of a security feature of a public body's electronic data processing system, information technology system, telecommunications network, or electronic security system, including hardware or software security, password, or security procedure, process, configuration, software, and code is not a "public record".
- **"Custodian"** means "the public official or head of any public body having custody or control of a public record, or a representative specifically authorized by him to respond to requests to inspect any such public records."

RIGHT OF ACCESS, LA RS 44:31

- Providing access to public records is a responsibility and duty of the appointive or elective office of a custodian and his employees.
- Any person of the age of majority may inspect, copy or reproduce any public record.
- Any person may obtain a copy or reproduction of a public record.
 - Exception: La. R.S. 44:31.1 limits access for individuals in custody following a felony conviction.
- The burden of proving that a public record is not subject to inspection rests with the custodian.
- Note that the right of access includes alternative options for exercising the right of access: right to inspect, right to copy, right to reproduce and right to obtain, from

the custodian, a reproduction. The method of access is a choice of the requestor, not the custodian.

- Members of the public can use the mail to request copies of public records. *Elliot v. Dist. Att'y of Baton Rouge*, 94-1804 (La.App. 1 Cir. 9/14/95), 664 So.2d 122.
 - Does this include the right to e-mail a public records request?
- The right to reproduce has come up in the context of handheld or portable scanners to electronically reproduce public records. *First Commerce Title Co., Inc. v. Martin*, 38,903 (La.App. 2 Cir. 11/17/04), 887 So.2d 716.
- The right to obtain a reproduction from the custodian has come up in the context of obtaining a digital reproduction of records maintained in a digital format, holding that the custodian may not inquire into the requestor's choice of medium when exercising the right to view public documents. *Johnson v. City of Pineville*, 08-1234 (La.App. 3 Cir. 4/8/09), 9 So.3d 313.
- The custodian need only produce or make available for copying, reproduction, or inspection the existing records containing the requested information, and is not required to create new documents in the format requested. *Nungesser v. Brown*, 95-3005 (La. 2/16/96), 667 So.2d 1036, 1037.

RESPONDING TO A REQUEST

- The custodian may not make any inquiry of any person asking for access to a public record, except age and identification, and may require person to sign a register. La. R.S. 44:32(A).
- If any record contains material which is not public record, the custodian may separate the nonpublic record and make the public record available for examination.
- Examination must occur during working hours, unless the custodian authorizes inspection otherwise, in which case the person designated to represent the custodian shall be entitled to reasonable compensation.
- When a request is made for a public record to which the public is entitled, the custodian shall segregate the record so that it can be reasonably viewed. La. R.S. 44:33(A)(1).
- If segregating the record would be unreasonably burdensome or expensive, or if the record is maintained in a fashion that makes it readily identifiable and renders further segregation unnecessary, the official shall so state in writing and shall state the location of the requested record. La. R.S. 44:33(A)(2).
- If the record is immediately available, because it is not in active use, it must be immediately presented. If it is not immediately available because it is in active use, the custodian must promptly certify this in writing to the requestor and schedule a time within three days to inspect the record at issue. La. R.S. 44:33(B).

- If a custodian receives a public records request for a record over which he/she is not in custody, the custodian must promptly certify this in writing to the requestor, and certify the reasons for the absence, its location, identify the person who has custody of such record, and when the record was removed from the custodian's custody or control. La. R.S. 44:34.
- In any case in which a record is requested and a question is raised by the custodian of the record as to whether it is a public record, such custodian shall within three days, exclusive of Saturdays, Sundays, and legal public holidays, of the receipt of the request, notify in writing the person making such request of his determination and the reasons therefor. Such written notification shall contain a reference to the basis under law which the custodian has determined exempts a record, or any part thereof, from inspection, copying, or reproduction. La. R.S. 44:32(D).

FEES, LA RS 44:32

- It is a duty of the custodian to provide copies to persons who request such. For all public records, except those of state agencies, the custodian may establish and collect reasonable fees for making copies.
- For records of the clerk of court, the clerk may establish uniform written procedures for reproduction of records. The use or placement of photocopying equipment in the clerk's office is prohibited.
- For public records of state agencies, fees are charged according to the uniform fee schedule adopted by the commissioner of administration (currently 25 cents per page).
- No fee shall be charged to any person to examine or review any public records, except as provided in La. R.S. 44:32, and no fee shall be charged for examination or review to determine if a record is subject to disclosure.
- The appropriate fee for providing electronic access to records?

RETENTION, LA RS 44:36

- All public bodies shall exercise diligence and care in preserving the public record for the period of time specified in a formal records retention schedule developed and approved by the state archivist (Records Management, Secretary of State). In all instances where a formal retention schedule has not been developed, public records must be kept for a period of three years from the date the public record was made.

EXCEPTIONS

- Courts have consistently opined that any exception is in derogation of the public's constitutional right to know, and therefore, any restriction to the right of access must be narrowly interpreted.
- Remember that Article XII, Section 3, provides the right to inspect or examine public documents "except in cases established by law." Therefore, much of the

remainder of Chapter 1 of Title 44 is devoted to the numerous exceptions that the Legislature has established.

- La. R.S. 44:2 exempts records involved in a legislative investigation.
- La. R.S. 44:3 exempts most records of law enforcement agencies that pertain to pending criminal litigation that exists or may be reasonably anticipated. An exception to the exception is the initial arrest report (booking report) of a law enforcement officer who has arrested any person. If there is no longer any prospect of prosecution, the investigative records must be produced by the law enforcement agency, because at that time the exemption will expire.
 - Look to *In re a Matter Under Investigation*, 2007-1853 (La. 7/1/09), 15 So.3d 972 for a factor based test used to determine whether or not criminal litigation is reasonably anticipated.
- La. R.S. 44:4 contains about 5 pages of exceptions which relate to the exemption of the tax records, welfare applications, and applications and disciplinary activities of the many professional licensing boards.
- La. R.S. 44:4.1 was enacted to consolidate all of the exceptions to the public records law, which were not included in Title 44, into a single section in Title 44. Section 4.1 enumerates the statutory citations of exceptions that are in other titles of the Revised Statutes. La. R.S. 44:4.1 provides that any exception not enumerated in Chapter 1 of Title 44 shall have no effect. Subsection C of Section 4.1 excepts "... writings, records, or other accounts that reflect the mental impressions, conclusions, opinions, or theories of an attorney or an expert, obtained or prepared in anticipation of litigation or in preparation for trial."
- A federal court has held that the Louisiana Public Records Law does not require the disclosure of records shielded by the attorney client privilege. *Texaco v. Louisiana Land and Exploration Company*, 805 F.Supp. 385 (1992).
- Remaining sections in Chapter 1 exempt:
 - Records of the Governor (Section 5)
 - Hospital Records (Section 7)
 - Documents of the judiciary commission except the commission's report filed with the Supreme Court (Section 10)
 - Certain personnel records (Section 11)
 - Medical records of public employees whose insurance is provided by the State Office of Group Benefits (Section 12)
 - Circulation records of public libraries (Section 13)
 - Medical records pertaining to an individual public employee's disability retirement (Section 15)
 - Deferred Retirement Option Plan records of public employees (Section 16)
 - Immunization Records (Section 17)
 - Geophysical surveys furnished to the State Mineral Board (Section 18)
 - Autopsy photos and videos (Section 19).

- There is no statutory exemption relating to records in the custody of the judicial branch, however, in *Bester v. Louisiana Supreme Court Committee on Bar Admissions* 779 So.2d 715 (La. 2001), the Louisiana Supreme Court was faced with the issue of whether a person who had failed the bar exam was entitled to model answers and grading guidelines. The court acknowledged that there was no statutory exemption under the public records law, but stated that the court was not “...without authority to protect itself and its committees from being required to disclose sensitive documents.” The court held that as a separate branch of state government, it could exercise its inherent authority and that “in exercising its sovereign rulemaking authority, a state supreme court occupies the same position as that of a state legislature.”

PRIVACY

- Article I, Section 5 of the Louisiana Constitution establishes the right to privacy so that persons are protected, not from all invasions of privacy, but only from “unreasonable” invasions of privacy.
- There are no legislative provisions that specifically define the parameters of this basic right for the purposes of public records examinations, and the courts have been faced with the determination of the extent of the right to privacy. In those cases the courts have used the right of privacy guaranteed by Article I, Section 5 of the Constitution to limit this right to inspect public records.
- The right to privacy may be lost in many ways, such as by express or implied waiver or consent, or by a course of conduct which prevents its assertion. The right is not absolute; it is qualified by the rights of others. The right is limited by society’s right to be informed about legitimate subjects of public interest. **In ascertaining whether individuals have a reasonable expectation of privacy that is constitutionally protected, a court must determine not only whether the individual has an actual or subjective expectation of privacy, but whether that expectation is also of a type which society is prepared to recognize as bring reasonable.** When a request for public records is at issue, the custodian or the individual claiming the privacy right must prove that there is a reasonable expectation of privacy against disclosure of the information to a person entitled to access to the public information. **If, and only if, a reasonable expectation of privacy is found, the court must weigh or balance the public records disclosure interest against the privacy interest.** The balancing of these competing interests is done on a case-by-case basis given the particular facts and circumstances of each case that impact those interests.
 - *East Bank Consolidated Special Service Fire Protection District v. Crossen*, 892 So.2d 666, 04-838 (La.App. 5 Cir. 2004).
- See La. Atty. Gen. Op. No. 09-0298 for a detailed analysis of how the right to privacy balances with the right to know with respect to information held by public employers about public employees. This opinion states that a public employee’s name, home address (when he or she has not requested it be kept confidential), physical location of work, mailing address of work, salary information, job title, date of hire, length of state service, reimbursed expenses, and overtime paid in dollars and/or hours is public record subject to production pursuant to a public

records request. La. R.S. 44:11 protects disclosure of a public employee's home address when the employee has requested such information be kept private. A public employee's date of birth, age, performance ratings and payroll deductions are protected from disclosure due to Louisiana's constitutional right to privacy.

ENFORCEMENT

- Pursuant to La R.S. 44:35, if an applicant has been denied the right to inspect or copy a record by final determination of the custodian, or by the passage of five days, exclusive of Saturdays, Sundays and legal holidays, he may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, together with attorney's fees, costs and damages.
- If the court finds that the custodian arbitrarily or capriciously withheld the requested record or unreasonably or arbitrarily failed to respond to the request as required by law, actual damages may be awarded as well as civil penalties not to exceed one hundred dollars per day, exclusive of Saturdays, Sundays, and legal public holidays for each such day of such failure to give notification. La. R.S. 44:35(E).
- The custodian shall be personally liable for the payment of any such damages, and shall be liable in solido with the public body for the payment of the requester's attorney fees and other costs of litigation, except where the custodian has withheld or denied production of the requested record or records on advice of the legal counsel representing the public body in which the office of such custodian is located, and in the event the custodian retains private legal counsel for his defense or for bringing suit against the requester in connection with the request for records, the court may award attorney fees to the custodian. La. R.S. 44:35(E).
- Any person having custody or control of a public record, who violates any of the provisions of this Chapter, or any person not having such custody or control who by any conspiracy, understanding or cooperation with any other person hinders or attempts to hinder the inspection of any public records declared by this Chapter to be subject to inspection, shall upon first conviction be fined not less than one hundred dollars, and not more than one thousand dollars, or shall be imprisoned for not less than one month, nor more than six months. Upon any subsequent conviction he shall be fined not less than two hundred fifty dollars, and not more than two thousand dollars, or imprisoned for not less than two months, nor more than six months, or both. La. R.S. 44:37.
- The court determines the matter de novo and the burden is on the custodian to sustain his action. The court may view the documents in controversy in camera before reaching a decision. La. R.S. 44:35(B).
- Any person prevailing in a suit to inspect or receive a copy of a public record shall be awarded reasonable attorney's fees. The court may award partial fees in its discretion if the requestor is partially successful. La. R.S. 44:35(D).
- Only the person who requests to inspect or copy a public record and is denied that right belongs to the class of persons to whom the law grants the cause of action. *Vourvoulias v. Movassaghi*, 906 So.2d 461, 465, 2004-0262 La.App. 1 Cir. 2/11/05 (La. App. 1 Cir. 2005)

- **OTHER ENFORCEMENT STATUTES**

- La. R.S. 14:132, First and Second Degree-Injuring Public Records
- La. R.S. 14:133, Filing or Maintaining False Public Records

OPEN MEETINGS LAW

APPLICABLE STATUTES

- La. R.S. 42:12 through 42:28 (new statutory designations effective August 2010).

PURPOSE AND INTERPRETATION

- It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Toward this end, the provisions of R.S. 42:12 through 28 shall be construed liberally. La. R.S. 42:12(A).
- The purpose of these laws is to allow the public to observe and evaluate public officials, public conduct and public institutions. It is meant to protect citizens from secret decisions made without any opportunity for public input. *Courvelle v. La. Recreational and Used Motor Vehicle Commission*, 08-0952 (La.App. 1 Cir. 6/19/09), 21 So.3d 340; *Organization of United Taxpayers and Civic Associations of Southeast Baton Rouge v. La. Housing Finance Agency*, 96-2406 (La.App. 1 Cir. 11/7/97), 703 So.2d 107.

DEFINITIONS, LA RS 42:13

- For the purposes of the Open Meetings Law:
 - A "**meeting**" means the convening of a quorum of a public body to deliberate or act on a matter over which the public body has supervision, control, jurisdiction, or advisory power. It shall also mean the convening of a quorum of a public body by the public body or by another public official to receive information regarding a matter over which the public body has supervision, control, jurisdiction, or advisory power.
 - A "**public body**" means village, town, and city governing authorities; parish governing authorities; school boards and boards of levee and port commissioners; boards of publicly operated utilities; planning, zoning, and airport commissions; and any other state, parish, municipal, or special district boards, commissions, or authorities, and those of any political subdivision thereof, where such body possesses policy making, advisory, or administrative functions, including any committee or subcommittee of any of these bodies enumerated in this paragraph.
 - A "**quorum**" is a simple majority of the total membership of a public body.

- The Open Meetings Law shall not apply to chance meetings or social gatherings of members of a public body at which there is no vote or other action taken, including formal or informal polling of the members. La. R.S. 42:13(B).
- One issue that has come up in other jurisdictions is the issue of whether or not a quorum can be said to convene by virtue of sending text messages.
- Also, some states have considered banning cell phones and/or devices permitting public officials to text or e-mail during a meeting.

COMPLIANCE

- Any time a quorum meets to discuss, deliberate or receive information on a matter over which the body has supervision, jurisdiction and control...make your meeting open. La. R.S. 42:14(A).

VOTING

- Proxy voting and secret balloting is prohibited by La. R.S. 42:15(B).
 - Louisiana Attorney General Opinion 02-0106: The intent of La. R.S. 42:5(B) is to require physical presence at open meetings in order to participate in any matter. Any participation via telephone, whether it is to obtain a quorum or to allow voting by non-present board members is a violation of the open meetings law.
- All votes shall be viva voce and recorded in the minutes or other official, written proceedings of the body, and are public record. La. R.S. 42:15(C).

PUBLIC COMMENT

- Except school boards, which shall be subject to R.S. 42:15, each public body conducting a meeting which is subject to the notice requirements of R.S. 42:19(A) shall allow a public comment period at any point in the meeting prior to action on an agenda item upon which a vote is to be taken. The governing body may adopt reasonable rules, regulations, and restrictions regarding such comment period. La. R.S. 42:14(D).
 - This is a new amendment to the Open Meetings Law with the 2010 Regular Session. Prior to this amendment, public bodies just had to allow public comment at some time in the meeting, and this simply requires that the public body allow public comment before the body takes action on an agenda item.
- Many public bodies adopt rules, regulations and restrictions regarding public comment: limiting comment to agenda items, limiting time for public comment, requiring speaker to fill out some sort of card before he or she will be identified, etc.
 - Louisiana Attorney General Opinion 01-0367 states, in part - The comment period established by La. R.S. 42:5(D) applies only to items placed on the agenda, and the rules and regulations governing this period are to be established by each public body.

- Louisiana Attorney General Opinion 04-0107 states, in part – La. R.S. 42:5.1 does not preclude a school board from placing requirements on individuals that desire to speak such as filling out a sign-up card before a school board meeting, limiting the speaker to the agenda item on which he would like to speak, limiting the amount of time for each speaker, and/or restricting speakers from making defamatory or accusatory comments.

EXECUTIVE SESSION

- A public body may hold executive sessions upon an affirmative vote, taken at an open meeting for which notice has been given pursuant to R.S. 42:19, of two-thirds of its constituent members present. An executive session shall be limited to matters allowed to be exempted from discussion at open meetings by R.S. 42:17; however, no final or binding action shall be taken during an executive session. The vote of each member on the question of holding such an executive session and the reason for holding such an executive session shall be recorded and entered into the minutes of the meeting. Nothing in this Section or R.S. 42:17 shall be construed to require that any meeting be closed to the public, nor shall any executive session be used as a subterfuge to defeat the purposes of R.S. 42:12 through R.S. 42:23. La. R.S. 42:16.
- A public body may hold an executive session pursuant to R.S. 42:16 for one or more of the following reasons:
 - (1) Discussion of the character, professional competence, or physical or mental health of a person, provided that such person is notified in writing at least twenty-four hours before the meeting and that such person may require that such discussion be held at an open meeting, and provided that nothing in this Subsection shall permit an executive session for discussion of the appointment of a person to a public body. In cases of extraordinary emergency, written notice to such person shall not be required; however, the public body shall give such notice as it deems appropriate and circumstances permit.
 - (2) 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.
 - (3) Discussion regarding the report, development, or course of action regarding security personnel, plans, or devices.
 - (4) Investigative proceedings regarding allegations of misconduct.
 - (5) Cases of extraordinary emergency, which shall be limited to natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude.
 - (6) Any meeting of the State Mineral Board at which records or matters entitled to confidential status by existing law are required to be considered or discussed by the board with its staff or with any employee or other individual, firm, or corporation to whom such records or matters are confidential in their nature, and are disclosed to and accepted by the board

subject to such privilege, for the exclusive use in evaluating lease bids or development covering state-owned lands and water bottoms, which exception is provided pursuant to and consistently with the Public Records Act, being Chapter I of Title 44 of the Louisiana Revised Statutes of 1950, as amended, and other such statutes to which the board is subject.

- (7) Discussions between a city or parish school board and individual students or the parents or tutors of such students, or both, who are within the jurisdiction of the respective school system, regarding problems of such students or their parents or tutors; provided however that any such parent, tutor, or student may require that such discussions be held in an open meeting.
 - (8) 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, pursuant to R.S. 33:2492 or 2552.
 - (9) The portion of any meeting of the Second Injury Board during which records or matters regarding the settlement of a workers' compensation claim are required to be considered or discussed by the board with its staff in order to grant prior written approval as required by R.S. 23:1378(A)(8).
 - (10) Or any other matters now provided for or as may be provided for by the legislature.
- Louisiana Attorney General Opinion 09-0048 states, in part: Minutes from an executive session properly conducted under the Open Meetings Law (La. R.S. 42:6 and 42:6.1) and the Enhanced Ability to Compete Act (La. R.S. 46:1073) are confidential, and not required to be disclosed under the Public Records Act (La. R.S. 44:1 et seq.).

NOTICE, LA RS 42:19

- All public bodies, except the legislature and its committees and subcommittees, shall give written public notice of their regular meetings, if established by law, resolution, or ordinance, at the beginning of each calendar year. Such notice shall include the dates, times, and places of such meetings.
- All public bodies, except the legislature and its committees and subcommittees, shall give written public notice of any regular, special, or rescheduled meeting no later than twenty-four hours before the meeting.
- Notice includes the agenda, date, time, and place of the meeting. Providing adequate notice includes posting a copy of the notice at the principle office of the public body holding the meeting, or, if no such office exists, at the building in which the meeting is to be held; or by publication of the notice in an official journal of the public body no less than twenty-four hours before the meeting. Also, if a member of the news media has requested notice, the public body must provide notice to the news media in the same manner as is given to members of the public body.
- In cases of extraordinary emergency, notice must be given as the public body deems appropriate and circumstances permit.

- If the public body plans to discuss matters in executive session pursuant to La. R.S. 42:17(A)(2), the notice must include either a statement identifying the court, case number, and the parties relative to any pending litigation to be considered at the meeting or a statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation for which formal written demand has been made that is to be considered at the meeting.

AMENDING THE AGENDA

- La. R.S. 42:19(A)(1)(b)(ii) describes the method for amending the agenda (this was changed in the 2008 Regular Session). To amend the agenda, it requires the unanimous approval of the members present at a meeting. The matter shall be identified in the motion to take up the matter not on the agenda with reasonable specificity, including the purpose for the addition to the agenda, and entered into the minutes of the meeting. Prior to any vote on the motion to take up a matter not on the agenda by the public body, there shall be an opportunity for public comment.

MINUTES, LA RS 42:20

- All public bodies must keep minutes of their meetings. At a minimum, the minutes must include:
 - The date, time, and place of the meeting.
 - The 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.
 - Any other information that the public body requests be included or reflected in the minutes.
- The minutes are public records and must be made available within a reasonable time after the meeting. Minutes from an executive session are not required to be made public (see Atty. Gen. Op. referenced above).

RECORDINGS, LA RS 42:23

- All of any part of the proceedings in a public meeting may be video or tape recorded, filmed, or broadcast live.
- A public body shall establish standards for the use of lighting, recording or broadcasting equipment to insure proper decorum in a public meetings.

ENFORCEMENT; REMEDIES; PENALTIES

- Any action taken in violation of R.S. 42:12 through R.S. 42:23 shall be voidable by a court of competent jurisdiction. A suit to void any action must be commenced within sixty days of the action. La. R.S. 42:24.
- There are three options for enforcement under La. R.S. 42:25:
 - Any person who has been denied any right conferred by the provisions of R.S. 42:12 through R.S. 42:23 or who has reason to believe that the provisions of R.S. 42:12 through R.S. 42:23 have been violated may institute enforcement proceedings.

- Each district attorney shall enforce the provisions of R.S. 42:12 through R.S. 42:23 throughout the judicial district within which he serves. He may institute enforcement proceedings on his own initiative and shall institute such proceedings upon a complaint filed with him by any person, unless written reasons are given as to why the suit should not be filed.
- The attorney general shall enforce the provisions of R.S. 42:12 through R.S. 42:23 throughout the state. He may institute enforcement proceedings on his own initiative and shall institute such proceedings upon a complaint filed with him by any person, unless written reasons are given as to why the suit should not be filed.
- The remedies available, according to La. R.S. 42:26, are: a writ of mandamus, injunctive relief, declaratory judgment, judgment rendering the action void as provided in La. R.S. 42:24 or judgment awarding civil penalties as provided in La. R.S. 42:28.
- Is a person bringing an enforcement proceeding prevails, he shall be awarded reasonable attorney fees and other costs of litigation. If the person prevails in part, the court may award reasonable attorney fees or an appropriate portion thereof.
- Enforcement proceedings shall be instituted in the district court for the parish in which the meeting took place or will take place. These proceedings are tried by preference and in a summary manner. La. R.S. 42:27.
- Any member of a public body who knowingly and wilfully participates in a meeting conducted in violation of R.S. 42:12 through R.S. 42:23, shall be subject to a civil penalty not to exceed one hundred dollars per violation. The member shall be personally liable for the payment of such penalty. A suit to collect such penalty must be instituted within sixty days of the violation. La. R.S. 42:28.



JEFFERSON PARISH
LOUISIANA
LEGISLATIVE DELEGATION

November 10, 2010

Eula A. Lopez, Council Clerk
200 Derbigny Street, Suite 6700
Gretna, LA 70053

Dear Ms. Lopez,

Enclosed, for your reference, are the following materials from the recent Louisiana City Attorney's Association 2010 Conference / Continuing Legal Education hosted by the Louisiana Municipal Association.

- Open Meetings & Public Records: "How Laws Affect Increased Use of Technology"

Sincerely,

Rubye E. Noble
Legislative Liaison
Assistant Parish Attorney