

# Public Records Law

## FAQs

R.S. [44:1](#) - [44:41](#).

### Overview:

The following is a summary of the general principles and guidelines concerning Louisiana's Public Records Law. This document is presented in a frequently asked questions (FAQ) format. While fairly detailed, it is important to remember that every situation is unique and as a result each situation deserves careful individual review.

There are numerous links within the document directing your attention to areas within the document and to other related documents posted on the Louisiana Legislative Auditor's website and on external websites to facilitate your use of this document. For example, under the index section, you may go directly to any area of the FAQ by clicking the question you wish to view. Within the FAQ, there are several links to direct you to other areas of the FAQ and to relevant external documents. If you click on the individual question number, a link will return to the index to allow you to select another question to view.

## Index

### *Scope*

- [1.](#) What is the Public Records Law?
- [2.](#) What are Public Records?
- [3.](#) What is a Public Body?
- [4.](#) What is a custodian?
- [5.](#) How should the Public Records Law be construed?
- [6.](#) What documents are specifically exempted from being classified as public records under the Public Records Law?
- [7.](#) Are the work papers of the Legislative Auditor subject to inspection or reproduction under the Public Records Law?
- [8.](#) Is there any exemption for the books and records of the Governor?

### *General Provisions*

- [9.](#) What rights does an individual have to examine public records?
- [10.](#) Who is entitled to make a public records request?
- [11.](#) Who carries the burden of proving that a record is subject to inspection?
- [12.](#) What must be included in a request for public records?
- [13.](#) To whom should a request for public documents be made?
- [14.](#) What are the duties of the custodian?
- [15.](#) What requirements may a custodian place upon a requestor of public records?
- [16.](#) When must a custodian present the requested record for examination?
- [17.](#) What if the record is not currently in the possession of the custodian?
- [18.](#) May the requester specify a format for the record to be provided?

- 19.** What rights does an individual have if denied his or her right to inspect a public record?
- 20.** What damages may be awarded in a suit filed pursuant to R.S. 44:35?
- 21.** Who is liable for damages, payment of attorney's fees, and costs of litigation under a suit for denial of rights under the Public Records Law?
- 22.** Who can bring suit under R.S. 44:35?
- 23.** Who has a duty to preserve public records?
- 24.** How long must public records be preserved?
- 25.** How is a formal retention schedule created?
- 26.** What is the penalty for violation of the Public Records Law?
- 27.** Are there other resources available online on Public Records Law?

## *Scope*

### **Q.1. What is the Public Records Law?**

**R.S. [44:1](#), *et seq.***

- A.1.** The Public Records Law is found in La. R.S. [44:1](#), *et seq.*, which provides for the maintenance and disclosure of public records.

The Public Records Law is meant to ensure that public documents are preserved and open to view by the public. The Public Records Law which operates in conjunction with Louisiana's Open Meetings Law is the enabling legislation to ensure the mandate in [Article XII, Section 3](#) of the Louisiana Constitution which states, "no person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law." The Public Records Law is designed to ensure unfettered access to documents and to implement the inherent right of the public to be reasonably informed as to what public records contain and the manner, basis, and reasons upon which governmental affairs are conducted, while at the same time balancing the right of the public against the necessity for the custodian of public records to act in the public interest by protecting and preserving public records against unreasonable dangers of loss or damage, or acts detrimental to the integrity of public records. *Title Research Corp. v. Rausch*, 450 So.2d 933, (La. 1984).

There is no conflict between the Federal Privacy Act (5 U.S.C.A. Section 552a) and Louisiana's Public Records Act since the two bodies of law cannot apply to the same entities. AG Op No 07-251.

### **Q.2. What are Public Records?**

**R.S. [44:1](#).**

- A.2.** Public Records are defined in R.S. [44:1](#)(A)(2)(a) to include all of the following, including copies, duplicates, photographs (including microfilm), or other reproductions:

- Books
- Records
- Writings
- Accounts
- Letters and letter books
- Maps
- Drawings
- Photographs
- Cards
- Tapes
- Recordings
- Memoranda

- Papers
- Documentary Materials (regardless of physical form or characteristics, and including information contained in electronic data processing equipment)

**\* This list is illustrative and not exclusive.**

The documents must have been used, in use, or prepared, possessed, or retained for use in the following:

- Conduct, transaction, or performance of any:
  - Business
  - Transaction
  - Work
  - Duty, or
  - Function
- Conducted, transacted, or performed:
  - By or under the authority of the constitution or laws of the state
  - By or under the authority of any:
    - Ordinance, regulation, mandate, or order of any public body
  - Concerning the receipt or payment of any money received or paid by or under the authority of the constitution or laws of the state:
    - Records regarding public funds are public records and therefore right to inspection of non-public foundations exists provided that inspection is limited to records regarding the public funds. *State ex rel. Guste v. Nicholls College Foundation*, 592 So.2d 419 (La. App. 1 Cir. 1991).

Documents that may otherwise be Public Records are exempted from inclusion if an exemption is provided for in the Louisiana Constitution, such as the right to privacy afforded under [Article I, Section 5](#), or in Title 44 Chapter 1 of the Louisiana Revised Statutes.

R.S. [44:6](#) mandates that the completed reports of the Legislative Auditor shall be public records and shall be available at the office of the Legislative Auditor three days after the completion of the reports.

R.S. [44:8](#) declares that the Louisiana Office Building Corporation is a quasi-public corporation; that all papers, documents, contracts, legal agreements, correspondence, minutes of meetings, and any other records of the corporation are matters of public record; and all books and records of the corporation are subject to audit and review by the Legislative Auditor to the same extent as all other state departments or agencies.

R.S. [44:12.1](#) requires that the name of each applicant for a public position of authority or a public position with policymaking duties, the qualifications of such an applicant related to such position, and any relevant employment history or experience of such an applicant shall be available for public inspection, examination, copying, or reproduction as provided for in Chapter 2 of Title 44.

Further R.S. [44:12.1\(B\)\(1\)](#) prohibits a public body or agent acting on behalf of a public body from utilizing **only** oral contacts and interviews of applicants considered when filling vacancies in public positions of authority or public positions with policymaking duties, or use of any other means to circumvent the provisions of this section.

Applications for alcohol permits are public records but the names, addresses, ownership interests, social security numbers, and information on criminal background inquiry must be redacted before disclosure of remaining application information to third parties. AG Op. No. 05-0412.

**Q.3. What is a Public Body?**

**R.S. [44:1](#).**

**A.3.** A Public Body is defined in R.S. [44:1\(A\)](#) (1) as any of the following, including any committee, subcommittee, advisory board, or task force of the following:

- Branch
- Department
- Office
- Agency
- Board
- Commission
- District
- Governing Authority
- Political Subdivision
- Instrumentality of State, Parish, or municipal government, or
- Public or quasi-public nonprofit corporations designated as an entity to perform a governmental or proprietary function.

**Act 79 of the 2011 Regular Session, effective 8/15/11, added that affiliates of housing authorities shall be subject to public records law.**

The nominating committee and appointing authority for public bodies are subject to the Open meetings Law and Public Records Law. AG Op. Nos. 08-148, 06-311.

Drug courts, as quasi-public nonprofit corporations, are public bodies for the purpose of Louisiana's Public Records Law and subject to the Audit Law. AG Op. No. 06-138.

Advisory committees of local governing authorities are subject to the Open Meetings Law and Public Records Law. AG Op. Nos. 08-0211, 08-0143, 05-424.

**Q.4. What is a custodian? R.S. 44:1.**

**A.4.** A custodian is defined in R.S. 44:1(A)(3) as the public official or head of any public body having custody of a public record or a representative specifically authorized to respond to requests to inspect any such public records.

The custodian of a town's records depends on who is in charge of maintaining the records. The custodian could be the town clerk, the chief of police, or the director of finance.

**Q.5. How should the Public Records Law be construed?**

**A.5.** Louisiana's Public Records Law should be construed liberally, with any doubt resolved in favor of the right of access. *First Commerce Title Co., Inc. v. Martin*, 887 So.2d 716 (La. App. 2 Cir. 2004).

**Q.6. What documents are specifically exempted from being classified as public records under the Public Records Law?**

**A.6.** R.S. 44:4.1 mandates that only exceptions provided for in Chapter 1 of Title 44 and within the Constitution of Louisiana are valid, and that all other exceptions, exemptions, and limitations pertaining to public records not provided for under Chapter 1 of Title 44 or the Louisiana Constitution **shall have no effect**.

R.S. 44:4.1 then lists exemptions from other titles and chapters of the Revised Statutes and State Codes that are continued into effect by incorporation into Chapter 1 of Title 44. There are twelve added or deleted exemptions to the Public Records Law from the 2010 Regular Session and **one for the 2011 Regular Session**. Please check the extensive list in R.S. 44:4.1(B)

**Unless R.S. 44:1, *et seq.* expressly exempts a record, or unless there is a recognized constitutional right, such as the right to privacy found under Art I, Section 5 of the Louisiana Constitution, that requires exclusion of a record, all public records are generally subject to inspection and copying.**

Examples of exempted documents include:

- The work papers of the Legislative Auditor,
- Documents containing trade secrets or proprietary information,
- Documents pertaining to the security procedures, investigative techniques, or containing internal security information of a body,

- Security camera video tapes are not exempted and are public records subject to inspection by the public; however, video of executive session may be excluded. AG Op No 05-166.
- Accident reports, or information in accident reports, as provided in R.S. 32:398,
- Social Security Numbers of teachers,
- Private and unlisted phone numbers,
- Protected health information as defined in R.S. 29:762(10),
- Records held by police, district attorney, etc. pertaining to pending criminal litigation, and
  - This includes videos pertaining to the investigation, which should remain confidential until final adjudication or settlement. AG Op. No. 08-218.
- Names of minors must be redacted from police records when presented to third parties.
  - Names of minor delinquents may be released to victims but not to third parties due to Children's Code and application under R.S. [44:4.1](#). AG Op. No. 06-0007.

## Background

The constitutional right of privacy in Louisiana arises from [Article I, Section 5](#) of the Louisiana State Constitution, which states, "every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or **invasions of privacy**." The court has consistently held that the right to privacy in Louisiana can be described as the right to be left alone and to be free from unnecessary public scrutiny. *DeSalvo v. State*, 624 So.2d 897 (La. 1993). The right, however, like other personal rights can be lost in many ways by express or implied waiver or consent, or by a course of conduct which prevents assertion. *Parish Nat. Bank v. Lane*, 397 So.2d 1282 (La. 1981). The right of privacy is also limited by society's right to be informed about legitimate subjects of public interest. *Id.*

The right to privacy only applies when one has a **reasonable expectation** of privacy in the matter sought to be protected. *Capital City Press v. East Baton Rouge Parish Metropolitan Council*, 696 So.2d 562 (La. 1997). In order for the expected privacy to be reasonable and thus constitutionally protected, the expectation must not only be an actual or subjective expectation of privacy, but also of a type which society at large is prepared to recognize as being reasonable. *State v. Ragsdale*, 381 So.2d 492 (La. 1980).

The Louisiana Supreme Court has not consistently held on whether a balancing test should occur or not to determine if a public record should be exempted from inspection on privacy grounds. In *Capital City Press* (1997) the court held that a balancing test was inappropriate in ruling that applications for assistant director positions for the metropolitan airport were public records and subject to

inspection and not protected by a constitutional right to privacy. Ten years later, the court held in *Copeland v. Copeland*, 966 So.2d 1040 (La. 2007) that a balancing test was appropriate, balancing the public's interest in right to inspect public records and the individual's interest in right to privacy, in ruling that divorce records were public records and subject to inspection upon necessary redaction of information for the protection of the children.

In *Trahan v. Larivee*, 365 So.2d 294 (La. App. 3<sup>rd</sup> Cir. 1979) the court held that privacy provisions exempted from inspection the performance evaluation of a public employee. However in *Hilbun v. State, ex rel. Division of Administration*, 745 So.2d 1189 (La. App. 1<sup>st</sup> Cir. 1999), the court held that the investigative report concerning the alleged improprieties of a state employee, which contained statements from co-employees, was not entitled to protection under the right of privacy.

The court in *Capital City Press* held that absent statutory authorization, if the Legislature has spoken on an issue such as employee records and has not chosen to exempt a specific type of record, such as employee applications, then the court will not read into the constitution a right of privacy for those records and will hold that the individual has no objective expectation of privacy in regard to those records. Given this difference in the court's view of an appropriate test, and the apparent difference in the level of acceptance in recognizing a constitutional right of privacy, each case should be treated individually, looking to all the facts and circumstances of the situation. The court although applying varying tests appears to still favor disclosure over individual privacy rights, seemingly under the *Lane* ruling that privacy rights can be waived expressly, implicitly, or through a course of conduct.

Statutory exceptions to the Public Records Law can be found in R.S. [44:1](#), [44:2](#), [44:3](#), [44:3.1](#), [44:3.2](#), [44:4](#), [44:4.1](#), [44:5](#), [44:6](#), [44:7](#), [44:9](#), [44:10](#), [44:11](#), [44:12](#), [44:13](#), [44:15](#), [44:16](#), [44:17](#), [44:18](#), [44:19](#), [44:20](#), [44:21](#), [44:22](#), and [44:23.1](#).

The legislature added several exceptions to the Public Records Law in the 2010 Regular Session under R.S. 4:4.1. Among these are several exempting papers of the insurance commissioner related to insurance fraud and unfair trade practices, the anti-fraud plan of insurers and health maintenance organizations, work papers related to self-insurance funds; privileged communications related to police power of municipalities and parishes for code enforcement officers including animal control; reports from agency head under governmental ethics; and records of the coroner's office related to health intervention.

**Q.7. Are the work papers of the Legislative Auditor subject to inspection or reproduction under the Public Records Law? R.S. [44:4\(6\)](#)**

**A.7.** No. The public records law shall not apply to: "Any records, writings, accounts, letters, letter books, photographs or copies or memoranda thereof, in the custody

or control of the legislative auditor, or the actual working papers of the internal auditor of a municipality **until the audit is complete.**” R.S. [44:4\(6\)](#)

- AG Op. No. 08-0055A states that the **working papers of the Legislative Auditor remain exempt from the Public Records Law even after completion of the audit.**

The legislative history of R.S. [44:4\(6\)](#) as well as AG Op. No. 08-0055A clarify that the language at the end of R.S. [44:4\(6\)](#) exempting the work papers only until the audit is complete applies to only the working papers of the internal auditor of a municipality. Prior language of [44:4\(6\)](#) required that the work papers of the Legislative Auditor remain exempt, and the legislative history suggests that the legislature intended the temporal limitation to apply solely to the inclusion of an exemption for the work papers of municipal internal auditors. Further when read in conjunction with R.S. [44:6](#), which mandates that the completed reports of the Legislative Auditor shall be public records and shall be available at the office of the Legislative Auditor three days after the completion of the reports, it seems clear that the Legislature has never intended that the work papers of the Legislative Auditor lose their exemption status given in R.S. [44:4\(6\)](#)

**Q.8. Is there any exemption for the books and records of the Governor? R.S. [44:5](#).**

- A.8.** R.S. [44:5](#) exempts books, records, writings, accounts, letters, letter books, photographs or copies thereof, ordinarily kept in the custody or control of the Governor in the usual course of the duties and business of his/her office, **or to those having been used, being in use, or prepared, possessed, or retained for use by or on behalf of the Governor in the usual course of the duties and business of his office\*** Note change in law made by [Act No. 765](#) of 2008 Regular Session, [R.S. 44:4\(43\)](#).

According to AG Op. No. 92-128, the records of the Inspector General’s Office would be exempt under R.S. [44:5](#) from inspection under the Public Records Law, because the Inspector General’s Office is within the Governor’s Office.

R.S. [44:5](#) does not apply to any agency transferred or placed within the office of the governor. R.S. [44:5\(B\)](#).

This provision shall not prevent any person otherwise herein authorized to do so from examining and copying any books, records, papers, accounts, or other documents pertaining to any money or monies or any financial transactions in the control of or handled by or through the Governor. R.S. [44:5\(C\)](#).

### ***General Provisions***

**Q.9. What rights does an individual have to examine public records?**

**A.9.** [Article XII, Section 3](#) of the Louisiana Constitution's mandate 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" provides the origin for an individual's right to examine public records. Further, R.S. [44:31](#) states that it is the responsibility and duty of the appointive or elective office of a custodian and his or her employees to provide access to public records.

**Q.10. Who is entitled to make a public records request? R.S. [44:31](#).**

**A.10.** Except as otherwise provided for by law, any person of the age of majority may inspect, copy, or reproduce any public record, and **any** person may obtain a copy or reproduction of any public record.

R.S. [44:31.1](#) limits the definition of person to exclude individuals in custody after sentencing following a felony conviction who has exhausted his appellate remedies if the request is not limited to grounds upon which the individual could file for post conviction relief under Code of Criminal Procedure Article [930.3](#).

There are no limitations to the number or length of requests that an individual may request other than to the unavailability of a record, and the individual's right is not impaired by use of the records to publish or distribute the information in a manner critical to the public body. [AG Op. No. 93-482](#), [AG Op. No. 09-0298](#).

**Q.11. Who carries the burden of proving that a record is subject to inspection? R.S. [44:31](#).**

**A.11.** The burden of proving that a public record is not subject to inspection, copying, or reproduction **rests with the custodian**.

**Q.12. What must be included in a request for public records?**

**A.12.** The request need not include specific name or type of document requested; it is sufficient that requester gives reasonable description of information sought. *Nungesser v. Brown* 664 So.2d 132, (La. App. 1 Cir. 1995). \* reversed on other grounds.

The request may be made in person during regular business hours or requested by letter. *Elliot v. District Attorney of Baton Rouge*, 664 So.2d 122 (La. App. 1 Cir. 1995).

**Q.13. To whom should a request for public documents be made?**

**A.13.** All requests for public documents should be directed to the custodian of the particular public record.

**Q.14. What are the duties of the custodian? R.S. [44:31](#), [44:32](#), [44:33](#).**

- A.14.** R.S. [44:31](#) states that it is the responsibility and duty of the appointive or elective office of a custodian and his/her employees to provide access to public records. R.S. [44:32](#) requires that the custodian present any public record to any person of the age of majority who so requests. Further, the custodian shall make no inquiry of any person who applies for a public record, except an inquiry as to the age and identification of the person.

A custodian may make inquiries as to whether an individual falls within the exclusions of R.S. [44:31.1](#) concerning requests from individuals in custody for a felony conviction who have exhausted their appellate remedies. The custodian can inquire as to whether the requestor is in custody for a felony conviction, has exhausted his appellate remedies, and whether the request is limited to grounds for post-conviction relief under [CCRP 930.3](#).

The custodian shall extend to the requestor all reasonable comfort and facility for the full exercise of the right granted under Chapter 2 of Title 44, provided that nothing prevents the custodian from maintaining such vigilance as is required to prevent alteration of any record while it is being examined.

If any record contains material which is not a public record, the custodian may separate the nonpublic record and make the public record available for examination.

For all public records, it is the duty of the custodian of the public records to provide copies to persons requesting.

**No fee may be charged to any person to examine or review any public records, except as provided for under R.S. [44:32](#)(C), and no fee may be charged for examination or review to determine if a record is subject to disclosure, except as may be determined by a court of competent jurisdiction.**

If a record is requested and the custodian raises a question regarding whether or not the requested record is a public record, the custodian must within three (3) days, exclusive of Saturdays, Sundays, and legal public holidays, of receipt of the request, notify in writing the person making the request of the custodian's determination and reasons therefore. The written notification shall contain a reference to the basis under the law which the custodian has determined exempts the record, or any part of the record, from inspection, copying, or reproduction.

Under R.S. [44:33](#) a custodian must segregate any requested public record from the other records under his/her custody so that the public can reasonably view the requested record.

If segregating the record would be unreasonably burdensome or expensive, or if the record requested 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.

See [AG Op. No. 09-0298](#) for a discussion of the duties of the custodian.

**Q.15. What requirements may a custodian place upon a requestor of public records? R.S. [44:32](#).**

**A.15.** A custodian may require a person to sign a register but shall not review, examine, or scrutinize any copy, photograph, or memoranda in the possession of any person requesting public records.

A custodian of public records, not of a state agency, may establish and collect reasonable fees for making copies of public records.

The custodian of public records of a state agency shall charge fees for copies according to the uniform fee schedule adopted by the commissioner of administration as provided by R.S. [39:241](#).

The custodian of any public records **may** furnish copies without charge or at a reduced charge to indigent citizens of the state.

Custodians of public records of state agencies **may** also furnish free copies or at reduced charge for individuals whose use of the copies, as determined by the custodian, will be limited to a public purpose, including but not limited to use in a hearing before any governmental regulatory commission.

The custodian can require that examination of public documents occur during regular office and working hours but may authorize examination at other times, with any additional costs for staffing paid out of funds provided in advance by the person examining the public records outside of regular office and working hours.

**Q.16. When must a custodian present the requested record for examination? R.S. [44:33](#).**

**A.16.** The custodian shall immediately present any public record that is immediately available, due to its current non-use, to a requestor. If the record is not immediately available, i.e. in active use at the time of the application requesting record, the custodian shall promptly certify the unavailability of the record to the requestor in writing, and in this certificate fix a day and hour within three (3) days, exclusive of Saturdays, Sundays, or legal holidays, for the exercise of the requestor's right to examine the record.

**Q.17. What if the record is not currently in the possession of the custodian?**

R.S. [44:34](#).

**A.17.** R.S. [44:34](#) requires that the custodian of a requested public record that is currently not in the custody or control of the custodian promptly certify in writing of the absence of the record to the requestor, citing the reason for the absence of the record from his/her custody or control, the current location of the record, who has current custody or control of the record, and the exact time at which the record was taken from his/her custody or control, to the best of his/her knowledge and belief. The custodian shall also include in the certificate ample and detailed answers to inquiries of the applicant which may facilitate the exercise of the right granted by Chapter 2 of Title 44.

**Q.18. May the requester specify a format for the record to be provided?**

**A.18.** The third circuit court held that a Requester was entitled to have records of city employee's e-mail account be electronically reproduced on compact disc (CD), digital video disc (DVD), or flash drive pursuant to a Public Records Act request, despite claim that permitting electronic reproduction would allow members of the public to undetectably alter the copies they received, where requester provided the medium at his own cost, no law existed restricting the reproduction of records in digital format, and records reproduced on hard copy had potential to be altered as well. *Johnson v. City of Pineville*, App. 3 Cir.2009, 9 So.3d 313, 2008-1234 (La.App. 3 Cir. 4/8/09).

**Q.19. What rights does an individual have if denied his or her right to inspect a public record?** R.S. [44:35](#).

**A.19.** An individual who has been denied the right to inspect or copy a record under the provisions of this chapter, either by:

- A final determination of the custodian, or
- By passage of five days(exclusive of Saturdays, Sundays, and legal public holidays) from the date of request **without receiving a final determination in writing by the custodian,**

The individual may institute proceedings for the issuance of a writ of mandamus (court order compelling the custodian to act), injunctive, or declaratory relief, as well as payment of attorney's fees, costs, and damages as provided for under R.S. [44:35](#). The proceedings must be filed in the district court for the parish in which the office of the custodian is located.

**Q.20. What damages may be awarded in a suit filed pursuant to R.S. [44:35](#)?**

**A.20.** If the court finds that the custodian

- arbitrarily and capriciously withheld the requested record, or

- unreasonably or arbitrarily failed to respond to the request as required by R.S. [44:32](#).

The court may award the requester:

- Any actual damages (proven by the requestor to have resulted from the actions of the custodian)
- Civil penalties **not to exceed one hundred dollars per day**, exclusive of Saturdays, Sundays, and legal public holidays for each day of the custodians failure to give notification.
  - ❖ Awarded only when the custodian fails to respond.

**If the requestor prevails** in his/ her suit against the custodian, then he/she **shall be awarded reasonable attorney’s fees and other costs of litigation.**  
R.S. [44:35](#)(D)

**Q.21. Who is liable for damages or payment of attorney’s fees and costs of litigation under a suit for denial of rights under the Public Records Law?**  
R.S. [44:35](#)(E)(2)

**A.21.** The custodian is **personally liable** for the payment of any damages awarded, and is liable *in solido* with the public body for the payment of the requestor’s attorney fees and other costs of litigation.

The custodian is **not personally liable** for attorney fees and costs of litigation if he/she **withheld or denied** production of the requested record or records **on the advice of the legal counsel representing the public body in which the office of such custodian is located.**

In the event the custodian retains private legal counsel for his/her defense or for bringing suit against the requester in connection with the request for records, the court may award attorney fees to the custodian.

**Q.22. Who can bring suit under R.S. [44:35](#)?**

**A.22.** Only the person who requests to inspect or copy a public record and is denied that right has a right of action. *Vourvoulias v. Movassaghi*, 906 So.2d 461 (La. App. 1<sup>st</sup> Cir. 2005).

The language of R.S. [44:35](#). provides that “**any person**” may institute proceedings, so even individual who make requests in their “**official capacity**” can bring suit if denied right to inspect or copy public records. *Nungesser v. Brown*, 664 So.2d 132 (La. App. 1<sup>st</sup> Cir. 1995). \* reversed on other grounds.

**Q.23. Who has a duty to preserve public records?** R.S. [44:36](#).

**A.23. All persons and public bodies** having custody or control of any public record, other than conveyance, probate, mortgage, or other permanent records required by existing law to be kept for all time, **shall exercise diligence and care in preserving public record for the period or periods of time specified for such public records in formal records retention schedules** developed and approved by the state archivist and director of the division of archives, records management, and history of the Department of State.

R.S. [44:39](#) and [44:40](#) allow for electronic conversion of all public documents. The policies and procedures for this conversion and retention of original documents and digital backups are established by the Department of State Archives. [AG Op. No. 05-408.](#)

**Q.24. How long must public records be preserved?** **R.S. [44:36.](#)**

**A.24.** That largely depends on the nature of the record.

[R.S. 44:36](#) requires that **all persons or public bodies** that have custody or control of any public record, other than those such as conveyance, mortgage, and other similar permanent records that are required to be preserved forever by law, **must maintain the record according to a formal retention schedule** developed and approved by the state archivist and director of the division of archives, records management, and history of the Department of State.

If a formal retention schedule has not been executed and **no period is otherwise proscribed by law**, public records must be preserved and maintained for a period of **at least three years** from the date on which the public record was made.

The Secretary of State's Office cautions against disposal of records as Federal guidelines may require extended periods of preservation, thus making creation of a formal retention schedule imperative.

State agencies are further required under Louisiana Revised Statute [44:411](#) to develop and submit a records retention schedule (a listing of their agency's records with the retention requirements to meet their administrative, legal and financial needs) for review and approval by the State Archives. Until a retention schedule has been approved, La. R.S. [44:36](#) requires agencies to maintain their records for three years from the date the record is made (unless required longer by specific statute). It is important to note that La. R.S. [44:36](#) does not exempt agencies from developing a records retention schedule required under [44:411](#).

**Q.25. How is a formal retention schedule created?**

**A.25.** An agency or public body should contact the Secretary of State's Office or visit [www.sos.louisiana.gov](http://www.sos.louisiana.gov) to establish a formal retention schedule regarding the agency or body's individual records.

**Q.26. What is the penalty for violation of the Public Records Law? R.S. [44:37](#).**

**A.26.** Any person having custody or control of a public record, who violates any of the provisions of Chapter One of Title 44, or any person not having 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 that chapter to be subject to inspection, shall **upon first conviction** be fined not less than one hundred dollars (**≥\$100**), and not more than one thousand dollars (**≤\$1,000**), **or** shall be imprisoned for not less than one month, nor more than six months (**1 – 6 months**).

**Subsequent convictions** shall be fined not less than two hundred fifty dollars (**≥\$250**) and not more than two thousand dollars (**≤\$2000**), or imprisoned for not less than two months, nor more than six months (**2-6 months**), **or both**.

R.S. [14:132](#) makes it a criminal offense for the intentional removal, mutilation, destruction, alteration, falsification, or concealment of any record, document, or other thing:

Filed or deposited, by authority of law, in any public office or with any public officer; or

Defined as a public record pursuant to R.S. [44:1](#), *et seq.* and required to be preserved in any public office or by any person or public officer pursuant to R.S. [44:36](#).

R.S. [14:133](#) makes it a crime to file a false public record. The statute defines the filing of false public records as:

“The filing or depositing for record in any public office or with any public official, or the maintaining as required by law, regulation, or rule, with knowledge of its falsity, of any of the following”

- Any forged document
- Any wrongfully altered document
- Any document containing a false statement or false representation of a material fact.

The penalty clause found in R.S. [14:133\(C\)](#) applies to both the “filing” and “maintaining” of false public records. AG Op No 04-248.

**Q.27. Are there other resources available online on Public Records Law?**

**A.27.** Yes, there are many resources available online.

**Public Records Law**  
**Revised 7/28/2011**

The *Attorney General's Office* has a summary that can be viewed [here](#).  
The *Public Affairs Research Council of Louisiana's* summary on public records can be seen [here](#).  
The *Towntalk* has a summary that can be view [here](#).  
*Lafayette City Government's* summary can be seen [here](#).

**Recent AG Opinions:**

**AG Op. No. 10-0272 (4/13/11)** – E-mails of a purely personal nature sent on a public e-mail account with no relation to public business are not public records subject to disclosure under R.S. 44.1(A)(2)(a).

CAVEAT: This opinion does not address the use of public property and LA Const. Article VII Section 14 violations, internal policies, or other issues.

**AG Op. No. 10-0110** – The AG opines on the database maintained by a Parish Communications District and the 911 information of individuals with names and addresses. If the data is gathered from a landline for which the individual has not requested an unlisted number and /or address, the information is public record subject to disclosure. If the data is gathered from a landline for which the individual has requested an unlisted number and/or address, the information is protected from disclosure due to privacy concerns; if the data is gathered from a wireless number, the information is exempt from disclosure by the terms of R.S. 33:9109.

**AG Op. 10-0218** – The AG opines that water usage figures from the records of a public water district are a public record subject to inspection under the public records act.