

## RÉSUMÉ DIGEST

HB 116

2024 Regular Session

McMakin

Present law (R.S. 44:31) generally provides that, except as otherwise provided in law, any person of the age of majority may inspect and any person may copy or reproduce any public record. Further provides that the burden of proving that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian. Proposed law would have retained present law.

Present law (R.S. 44:11) provides that certain items in the personnel records of a public employee shall be confidential. Proposed law would have retained present law and expressly provided that, except as provided for in present law, personnel records of public employees were public records subject to disclosure.

Proposed law would have added opinions contained in evaluation reports, information required to be kept confidential pursuant to federal law, and information that may put the employee or another employee at risk of harm as items in the personnel records of a public employee that would be confidential.

Present law provides that the home address of the public employee shall remain confidential when such employee has requested that the address be confidential; except (a) the home address of any employee of a city or parish school board shall be made available to recognized educational groups and (b) the home address of a member of the Firefighters' Retirement System if that information is requested by a legislator, an agency or employer reporting information to the system, or a recognized association of system members.

Proposed law would have removed the exceptions that allow the home address of any employee of a city or parish school board and members of the Firefighters' Retirement System to be made available to certain persons.

Present law (R.S. 44:5) provides that the legislature recognizes that it is essential to the maintenance of a democratic society that public business be performed in an open and public manner, and that the Public Records Law shall be construed liberally so as to facilitate, rather than hinder, access to public records.

Proposed law would have further provided that the legislature recognizes that the right of privacy is limited by society's right to be informed about legitimate subjects of public interest. Proposed law would have provided that a public employee's reasonable expectation of privacy as it relates to his personnel records should be construed to facilitate, rather than hinder, access to public records.

Present law (R.S. 44:35) authorizes a person who has been denied the right to inspect, copy, reproduce, or obtain a copy of a public record to institute proceedings for the issuance of a writ of mandamus and injunctive or declaratory relief in the district court for the parish in which the office of the custodian is located. Further provides that any suit to enforce the provisions of the Public Records Law shall be tried by preference and in a summary matter.

Proposed law would have further specifically provided that any action to enforce the disclosure of personnel records of a public employee should be tried by preference and in a summary manner as provided in present law.

Present law (R.S. 44:32) provides that if a record is requested and the custodian determines that it is not a public record, the custodian shall notify the requestor in writing of his determination and the reasons therefore with a reference to the basis under law for the custodian's determination. Proposed law would have required that if the record was a personnel record, the custodian would not cite solely to a court decision as the basis to exempt the record.

(Proposed to amend R.S. 44:11 and 32(D))

## **VETO MESSAGE:**

"Please be advised that I have vetoed House Bill 116 of the 2024 Regular Legislative Session. This bill designates all personnel records of a public employee as public records. While some personnel records are undoubtedly public records under R.S. 44:1(2)(a), we must not ignore a public employee's right to privacy. Public employee personnel records include sensitive information such as emergency contacts, background checks, tax and payroll deductions, credit reports, dates of birth, beneficiary information, secondary employment information, school transcripts, prescribed medications, and other similar information.

Louisiana Constitution article I, § 5 guarantees that "every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy." When a public employee has a reasonable expectation of privacy, a court will weigh the public records disclosure interest against the privacy interest. *Webb v. City of Shreveport*, 371 So.2d 316, 319 (La. App. 2nd Cir. 1979). Disclosure is warranted when the public's right of access is sufficiently compelling to override the individual's right to privacy. *Rasier, LLC v. City of New Orleans*, 16-0930 (La. App. 4 Cir. 6/14/17), 222 So. 3d 806, 818 (citing *Angelo Iafrate Const., L.L.C. v. State ex. Rel. Dept. of Transp. And Development*, 03-0892 (La. App. 1 Cir. 5/14/04) 879 So.2d 250); *Capital City Press v. East Baton Rouge Parish Metropolitan Council*, 696 So.2d at 567; *Shane v. Parish of Jefferson*, 14-2225, (La. 12/8/15) 209 So. 3d. 726, 741.

Additionally, House Bill 116 also forbids a custodian from citing a court decision as the basis for withholding a record. This has legal problems as "statutory interpretation and the construction to be given to legislative acts is a matter of law and rests with the judicial branch of the government." *Bourgeois v. A.P. Green Indus., Inc.*, 00-1528 (La. 4/3/01), 783 So. 2d 1251, 1260.

I look forward to continuing to work with Representative McMakin on refining our public records law and clarifying the provisions of 44:11 to ensure the public can easily access records where an employee does not have a reasonable expectation of privacy. However, for the reasons explained above, House Bill 116 will not become law."