AN ACT

To amend and reenact R.S. 44:1(A)(2)(a), 32(A), (C)(1)(a), and (D), 35(E)(2), and 37, relative to public records; to provide for the scope of records requests; to provide for response time; to provide for liability of custodians of records; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 44:1(A)(2)(a), 32(A), (C)(1)(a), and (D), 35(E)(2), and 37 are hereby amended and reenacted to read as follows:

§1. General definitions

A.

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(2)(a) 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 **electronically stored information** or information contained in **databases** or 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, are "public records",
except as otherwise provided in this Chapter or the Constitution of Louisiana.

§32. Duty to permit examination; prevention of alteration; payment for overtime;
copies provided; fees

A. (1) The custodian shall present any public record to any person of the age
of majority who so requests. 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 and may require the person to sign a register and shall not review, examine,
or scrutinize any copy, photograph, or memoranda in the possession of any such
person; and shall extend to the person all reasonable comfort and facility for the full
exercise of the right granted by this Chapter; provided that nothing herein contained
shall prevent the custodian from maintaining such vigilance as is required to prevent
alteration of any record while it is being examined; and provided further, that
examinations of records under the authority of this Section must be conducted during
regular office or working hours, unless the custodian shall authorize examination of
records in other than regular office or working hours. In this event the persons
designated to represent the custodian during such examination shall be entitled to
reasonable compensation to be paid to them by the public body having custody of
such record, out of funds provided in advance by the person examining such record
in other than regular office or working hours. The custodian shall be permitted to
make an inquiry regarding the specificity of the records sought by the applicant,
if, after review of the initial request, the custodian is unable to ascertain what
records are being requested.
(2) If the custodian reasonably determines that the request would substantially disrupt required government operations, the custodian may deny access only after reasonable attempts to narrow or specify the request with the requestor.

* * *

C.(1)(a) For all public records, except public records of state agencies, it shall be the duty of the custodian of such public records to provide copies to persons so requesting. The custodian may establish and collect reasonable fees for making copies of public records. The custodian may request payment of fees in advance of production. The custodian shall not be required to provide copies to persons who fail to pay applicable copying fees or fulfill subsequent records requests until any outstanding fee balance is resolved. Copies of records may be furnished without charge or at a reduced charge to indigent citizens of this state.

* * *

D. 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 five days, exclusive of Saturdays, Sundays, and legal public holidays, of the receipt of the request, in writing for such record, 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.

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§35. Enforcement

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E. 

(2) The custodian shall be personally liable for the payment of any such damages pursuant to Paragraph (1) of this Subsection, 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.

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§37. Penalties for violation by custodians of records

Any person having custody or control of a public record, who arbitrarily or
capriciously 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 arbitrarily or capriciously 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.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Matt DeVille.

DIGEST

SB 478 Engrossed 2022 Regular Session Bernard

Present law defines which materials are considered public records.

Proposed law adds electronically stored information and information contained in databases
to the list of materials considered public records.

Present law provides that the custodian of records cannot make an inquiry of any applicant
of a public record except an inquiry as to the age and identification of the person.

Proposed law retains present law and authorizes the custodian of records to make an
additional inquiry relative to the specificity of the request if, after review of the initial
request, he is unable to ascertain what records are being requested. Further allows the
custodian to deny access to a record after reasonable attempts to narrow or specify the
request with the requestor if he reasonably determines the request would substantially disrupt
government operations.

Present law provides that a custodian of public records may establish and collect reasonable
fees for making copies of public records and request payment of fees in advance of
production.

Proposed law retains present law and further provides that a custodian shall not be required to provide copies to persons who fail to pay applicable copying fees or fulfill subsequent records requests until any outstanding fee balance is resolved.

Present law provides that 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, in writing for such record, notify in writing the person making such request of his determination and the reasons therefor.

Proposed law grants the custodian five days to provide written notice to the requesting party.

Present law provides that the custodian of records shall be personally liable and liable in solido with the public body for the payment of damages due to a requester if a court of proper jurisdiction determines the custodian arbitrarily or capriciously withheld a requested record or unreasonably or arbitrarily failed to respond to a records request.

Proposed law retains present law.

Present law provides for penalties for violations of public records law by custodians of public records.

Proposed law requires the violation of public records law to be arbitrary or capricious in nature to qualify for penalties in present law.

Effective August 1, 2022.

(Amends R.S. 44:1(A)(2)(a), 32(A), (C)(1)(a), and (D), 35(E)(2), and 37)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Senate and Governmental Affairs to the original bill

1. Make technical corrections.
2. Add electronically stored information to the list of materials considered public records.
3. Clarify that a custodian of records may deny access to a record only after reasonable attempts to narrow or specify the request with the requestor if he determines that a records request would substantially disrupt required government operations.