

SENATE BILL NO. 478

BY SENATOR BERNARD AND REPRESENTATIVES FIRMENT, MIKE JOHNSON,  
SEABAUGH AND THOMPSON

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AN ACT

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

§1. General definitions

A.

\* \* \*

(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, **unless the requestor fails to pay the applicable copying fees after**

1            **being notified of the amount in advance of production or the requestor has an**  
 2            **outstanding balance from a prior request.** The custodian may establish and collect  
 3            reasonable fees for making copies of public records. The custodian may request  
 4            payment of fees in advance of production. Copies of records may be furnished  
 5            without charge or at a reduced charge to indigent citizens of this state.

6                                    \*           \*           \*

7                            (2) For all public records of state agencies, it shall be the duty of the  
 8            custodian of such records to provide copies to persons so requesting, **unless the**  
 9            **requestor fails to pay the applicable copying fees after being notified of the**  
 10           **amount in advance of production or the requestor has an outstanding balance**  
 11           **from a prior request.** Fees for such copies shall be charged according to the  
 12           uniform fee schedule adopted by the commissioner of administration, as provided  
 13           by R.S. 39:241 **or as otherwise fixed or provided by law.** ~~Copies shall be provided~~  
 14           ~~at fees according to the schedule, except for copies of public records the fees for the~~  
 15           ~~reproduction of which are otherwise fixed by law.~~ Copies of records may be  
 16           furnished without charge or at a reduced charge to indigent citizens of this state or  
 17           the persons whose use of such copies, as determined by the custodian, will be limited  
 18           to a public purpose, including but not limited to use in a hearing before any  
 19           governmental regulatory commission.

20                                    \*           \*           \*

21                            D. In any case in which a record is requested and a question is raised by the  
 22            custodian of the record as to whether it is a public record, such custodian shall within  
 23            ~~three~~ **five** days, exclusive of Saturdays, Sundays, and legal public holidays, of the  
 24            receipt of the request, in writing for such record, notify in writing the person making  
 25            such request of his determination and the reasons therefor. Such written notification  
 26            shall contain a reference to the basis under law which the custodian has determined  
 27            exempts a record, or any part thereof, from inspection, copying, or reproduction.

28                                    \*           \*           \*

29            §35. Enforcement

30                                    \*           \*           \*

1 E. \* \* \*

2 (2) The custodian shall be personally liable for the payment of ~~any such~~  
3 damages **pursuant to Paragraph (1) of this Subsection**, and shall be liable in solido  
4 with the public body for the payment of the requester's attorney fees and other costs  
5 of litigation, except where the custodian has withheld or denied production of the  
6 requested record or records on advice of the legal counsel representing the public  
7 body in which the office of such custodian is located, and in the event the custodian  
8 retains private legal counsel for his defense or for bringing suit against the requester  
9 in connection with the request for records, the court may award attorney fees to the  
10 custodian.

11 \* \* \*

12 §37. Penalties for violation by custodians of records

13 Any person having custody or control of a public record, who **arbitrarily or**  
14 **capriciously** violates any of the provisions of this Chapter, or any person not having  
15 such custody or control who by any conspiracy, understanding, or cooperation with  
16 any other person **arbitrarily or capriciously** hinders or attempts to hinder the  
17 inspection of any public records declared by this Chapter to be subject to inspection,  
18 shall upon first conviction be fined not less than one hundred dollars, and not more  
19 than one thousand dollars, or shall be imprisoned for not less than one month, nor  
20 more than six months. Upon any subsequent conviction he shall be fined not less  
21 than two hundred fifty dollars, and not more than two thousand dollars, or  
22 imprisoned for not less than two months, nor more than six months, or both.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_