

2022 Regular Session

SENATE BILL NO. 478

BY SENATOR BERNARD

PUBLIC RECORDS. Provides relative to the public records law. (8/1/22)

1 AN ACT

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

6 Be it enacted by the Legislature of Louisiana:

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

9 §1. General definitions

10 A.

11 \* \* \*

12 (2)(a) All books, records, writings, accounts, letters and letter books, maps,  
13 drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all  
14 copies, duplicates, photographs, including microfilm, or other reproductions thereof,  
15 or any other documentary materials, regardless of physical form or characteristics,  
16 including **electronically stored information or** information contained in **databases**  
17 **or** electronic data processing equipment, having been used, being in use, or prepared,

1 possessed, or retained for use in the conduct, transaction, or performance of any  
2 business, transaction, work, duty, or function which was conducted, transacted, or  
3 performed by or under the authority of the constitution or laws of this state, or by or  
4 under the authority of any ordinance, regulation, mandate, or order of any public  
5 body or concerning the receipt or payment of any money received or paid by or  
6 under the authority of the constitution or the laws of this state, are "public records",  
7 except as otherwise provided in this Chapter or the Constitution of Louisiana.

8 \* \* \*

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

11 A.(1) The custodian shall present any public record to any person of the age  
12 of majority who so requests. The custodian shall make no inquiry of any person who  
13 applies for a public record, except an inquiry as to the age and identification of the  
14 person and may require the person to sign a register and shall not review, examine,  
15 or scrutinize any copy, photograph, or memoranda in the possession of any such  
16 person; and shall extend to the person all reasonable comfort and facility for the full  
17 exercise of the right granted by this Chapter; provided that nothing herein contained  
18 shall prevent the custodian from maintaining such vigilance as is required to prevent  
19 alteration of any record while it is being examined; and provided further, that  
20 examinations of records under the authority of this Section must be conducted during  
21 regular office or working hours, unless the custodian shall authorize examination of  
22 records in other than regular office or working hours. In this event the persons  
23 designated to represent the custodian during such examination shall be entitled to  
24 reasonable compensation to be paid to them by the public body having custody of  
25 such record, out of funds provided in advance by the person examining such record  
26 in other than regular office or working hours. **The custodian shall be permitted to**  
27 **make an inquiry regarding the specificity of the records sought by the applicant,**  
28 **if, after review of the initial request, the custodian is unable to ascertain what**  
29 **records are being requested.**



1 requested record or records on advice of the legal counsel representing the public  
 2 body in which the office of such custodian is located, and in the event the custodian  
 3 retains private legal counsel for his defense or for bringing suit against the requester  
 4 in connection with the request for records, the court may award attorney fees to the  
 5 custodian.

6 \* \* \*

7 §37. Penalties for violation by custodians of records

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

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

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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.