

September 19, 2000
OPINION No. 00-314

26 U.S.C. 6103

La. Const. Art. 12, Section 3

LSA R. S. 44:1 *et al.*

LSA-R. S. 44:11

LSA-R. S. 32:393.1

LSA-R. S. 47:1508

La. Const. Art. 1, Section 5

LSA-R. S. 44:32(A)

LSA-R. S. 44:32(B)

LSA-R. S. 44:33

LSA-R. S. 47:1508.1

Honorable Mark A. "Tony" Gulotta
Mayor, City of Plaquemine
P. O. Box 675
Plaquemine, LA 70765-0675

In light of the law and Attorney General Opinions cited herein, public records must be produced upon request as provided by LSA-R. S. 44:1 *et seq.* However, information which is specifically exempted by law or information which would violate a person's constitutionally guaranteed right to privacy, may be separated or deleted from the public record before disclosure.

Dear Mayor Gulotta:

I am in receipt of your request for an Attorney General's opinion concerning the obligation of the City to disclose Utility Account information pursuant to a public records request. You stated that Plaquemine operates its own electrical, natural gas, water and sewerage utility service. You further stated that the customers' accounts contain:

information regarding the customer's social security number, driver's license number, address, telephone numbers, place of employment, as well as the past and current utility bill for that customer. The utility bill contains information regarding the usage by that customer, i.e. amount of kilowatts, gallons of water, or mcf of gas for the month.

You wanted to know what, if any, information should be disclosed as a public record pursuant to LSA R.S. 44:1 *et al.* Specifically, you stated that you had two areas of concern, and they were:

1. that the disclosure of social security numbers, driver's license numbers, possibly private telephone numbers appears to violate the customer's right to privacy if anyone can acquire this information simply by asking; and
2. in light of the current movement toward deregulation in the electrical utility field, disclosure of amount of usage by public power customers could place public power suppliers at a competitive disadvantage, if all an investor owned utility needed to do was simply ask to get this information.

The public's right to public records is fundamental and guaranteed by the Louisiana Constitution Article 12, Section 3, which provides that "[N]o person

shall be denied the right to . . . examine public documents, except in cases established by law." Title Research Corp. v. Rausch, 450 So.2d 933, 936 (La. 1984); Capital City Press v. EBRP Metropolitan Council, 96-1979 (La. 7/1/97), 696 So.2d 562, 564; Alliance for Affordable Energy v. Frick, 96-1763 (La. App. 4 Cir. 5/28/97), 695 So.2d 1126, 1130.

The Louisiana Public Records Law, Title 44, Chapter 1, Louisiana Revised Statutes, was enacted to implement the inherent right guaranteed by the Constitution of the general public's right to be informed as to the manner, basis, and reasons upon which governmental affairs are conducted. Trahan v. Larivee, 365 So.2d 294 (La. App. 3rd Cir. 1978), writ denied, 366 So. 2d 564 (La. 1979); Bartels v. Roussel, 303 So. 2d 833 (La. App. 1st Cir. 1974), writ denied, 307 So.2d 372 (La. 1975).

LSA-R.S. 44:1 reads in pertinent part:

(A)(2) 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 information contained in 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 as otherwise specifically provided by law.

A "custodian" is:

(A)(3) . . . the public official or head of any public body having custody or control of a public record, or a representative specifically authorized by him to respond to requests to inspect any such public records.

All custodians are under an obligation to provide access to public records under their custody and/or control. Based on the Public Records Law, the utility account information that is in the possession of the City of Plaquemine, would be considered public records. It is being used to conduct government business, i.e.,

the operation of a public utility. Thus, this information is subject to disclosure. The only way a custodian can deny the public's right of inspection is if there is some specific exemption granted by law or the disclosure of the information would violate a person's constitutionally guaranteed right to privacy.

You asked generally about the disclosure of information contained in your customers' utility accounts. Much of the information you listed must be provided as a public record. An issue similar to this was addressed in Attorney General Opinion Number 94-508. In that opinion, Caddo Parish Sewerage District No. 7, questioned the constitutionality of releasing utility bills and payment histories of public utility customers. In that opinion, it was concluded that public records should be produced upon request subject only to those limitations found in LSA-R.S. 44:32(A) and 44:33. However, any personally, identifiable financial information contained in public records should not be released in order to protect the privacy of individual customers. We attach a copy of Attorney General Opinion Number 94-508 for your convenience.

You stated in your letter that the city had specific concerns regarding the disclosure of social security numbers, driver's license numbers, and private telephone numbers because the releasing of this information "appears to violate the customer's right to privacy." Article 1, Section 5 of the Louisiana Constitution of 1974 prohibits "unreasonable" invasions of privacy. However, the right of privacy is not absolute; it is qualified by the rights of others. The right to privacy is also limited by society's right to be informed about legitimate subjects of public interest. Plaquemines Parish Commission v. Delta Development Co., 472 So.2d 560 (La. 1985); Parish National Bank v. Lane, 397 So.2d 1282 (La. 1981). Therefore, the customer's right to privacy must be balanced with the public's right of unfettered access to government. It must be determined if the customer has a reasonable expectation of privacy in the information.

In Alliance for Affordable Energy v. Frick, *Id.* at 1132-33, the court stated that "the custodian may separate the nonpublic record and make the public record available for examination. La. R.S. 44:32(B)." Therefore, any information determined to be protected by a customer's right to privacy can be separated or redacted from the information that is public record.

We now closely examine the issues you were specifically concerned with: the disclosure of social security numbers, driver's license numbers and private telephone numbers.

Social Security numbers

The issue of the release of social security numbers was addressed in Attorney General Opinion Number 90-272. The opinion held that social security numbers

are taxpayer identification material for income tax returns which has been deemed confidential by federal and state law. The opinion further states that:

26 U.S.C. 6103 mandates "return information" shall be confidential, and further defines any information relating to the "taxpayer's identity" to be "return information." LSA-R.S. 47:1508 duplicates the federal statute substantially, and R.S. 47:1508.1 (sic) defines the unauthorized disclosure of such "tax return information" to be a crime.

Attorney General Opinion Number 97-0495 also addressed the release of social security numbers in public records requests. That opinion stated that:

[S]ocial Security Numbers of registered voters should be deleted from records prior to their public disclosure in accordance with the Freedom of Information Act and Attorney General Opinion Number 91-295, and in accordance with Louisiana Acts 1997, Number 1420, effective January 1, 1998.

As both federal and state law require that social security numbers be kept confidential, an individual has a reasonable expectation that this information will not be disclosed. Therefore, this information should be deleted from documents produced pursuant to a public records request. We attach a copy of Attorney General Opinion Numbers 90-272 and 97-0495 for your convenience.

Driver's License numbers

Driver's license numbers are a part of a driver's records kept by the Department of Public Safety and Corrections. Attorney General Opinion Number 82-1168 opined that "[D]river's records kept by the Department of Public Safety are public records and must be made available to qualified individuals upon request." LSA-R.S. 32:393.1 provides for the dissemination of driver's records "to other persons, firms or corporation for uses other than official." An individual does not have a reasonable expectation of privacy in information (in this case, a driver's license number) when the information is disseminated by operation of laws. Further, we were unable to find a provision of state or federal law specifically exempting a driver's license number from the Public Records Law. Therefore, it is our opinion that a driver's license number is public record and can be disclosed. We attach a copy of Attorney General Opinion Number 82-1168 for your convenience.

Private telephone numbers

LSA-R.S. 44:11 states that the home telephone numbers of public employees, where such employee has chosen to have a private or unlisted home telephone

number, is confidential and exempt from the Public Records Law. It is reasonable that a private citizen has at least a similar expectation of privacy in this information as a public employee. It is therefore our opinion that a telephone number that is private or unlisted can be deleted from a public record.

To address your second concern regarding the competition in the utility field, this is not an exemption allowed by the Public Records Law. Article 12, Section 3 of the Louisiana Constitution of 1974 stands for the premise that the Public Records Law:

... must be construed liberally in favor of free and unrestricted access to records, and that access can be denied only when a law, specifically and unequivocally, provides otherwise. Whenever there is doubt as to whether the public has the right of access to certain records, the doubt must be resolved in favor of the public's right to see. To allow otherwise would be an improper and arbitrary restriction on the public's constitutional rights. Capital City Press v. EBRP Metropolitan Council, *Id.* at 564 citing Title Research Corporation v. Rausch, *Id.* at 936.

Therefore, a public body can not withhold public records when it is based solely upon a general claim that it would adversely affect competition in the utility field, in the absence of a specific legislative exemption from the Public Records Act.

In light of the law and Attorney General Opinions cited herein, public records must be produced upon request as provided by LSA-R.S. 44:1 *et seq.* However, information which is specifically exempted by law or information which would violate a person's constitutionally guaranteed right to privacy, may be separated or deleted from the public record before disclosure.

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We hope this opinion sufficiently addresses your concerns. If we can be of further assistance, please let us know.

Very truly yours,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY: _____
VERONICA L. HOWARD
Assistant Attorney General

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DATE REQUESTED:

DATE RELEASED: September 19, 2000

VERONICA L. HOWARD
Assistant Attorney General