

May 3, 2012
OPINION 12-0005

90 – C – PUBLIC RECORDS

Chief Kevin Billiot
Chief of Police, Town of Montgomery
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La. R.S. 44:1 et seq.

La. R.S. 44:3(A)(3)

Discusses the applicability of La. R.S. 44:3(A)(3) as applied to information requested from a police department.

Dear Chief Billiot:

Our office received a request from you for clarification on the Public Records Act, La. R.S. 44:1 *et seq.*, as it applies to certain items of information which have been requested from you.

In particular, you have asked whether the following information is subject to production under the Public Records Act:

- The schedule for Police Department personnel;
- Payroll records for each officer, including total number of hours worked during a particular fiscal year;
- A list of all training received by any officers who conduct training;
- Copies of all Police Department policies, rules and regulations;
- Whether or not any police officers have purchased any firearms on their own; and
- An inventory of all ammunition and firearms owned by the police department.

Your request letter indicates that you consider this information to be exempt under La. R.S. 44:3(A)(3) and you have asserted that public knowledge of this information could be detrimental to the safe operation of your department.

The right of access to public information is guaranteed by La.Const. art. XII, § 3, which provides that “[n]o person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.” The Public Records Law, which can be found at La. R.S. 44:1 *et seq.*, was enacted by the Louisiana Legislature to protect and define the constitutional right of access to public documents. The Louisiana Supreme Court has instructed that liberal construction of the Public Records Law should be followed, with any doubt being resolved in the favor of

access.¹ Unless an exception to the Public Records Law is applicable, a custodian has the responsibility and duty to provide access to public records, and the public has a right to copy, inspect or reproduce public records.²

Your request letter sets forth your position that the requested records are covered by a specific exception found at La. R.S. 44:3(A)(3), which provides:

Nothing in this Chapter shall be construed to require disclosures of records, or the information contained therein, held by the offices of the attorney general, district attorneys, sheriffs, police departments, Department of Public Safety and Corrections, marshals, investigators, public health investigators, correctional agencies, communications districts, intelligence agencies, or publicly owned water districts of the state, which records are:

[...]

Records containing security procedures, investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments collected or obtained in the prevention of terrorist-related activity, including but not limited to physical security information, proprietary information, operational plans, and the analysis of such information, or internal security information.

Thus, the issue you raise is whether the aforementioned requested items qualify under the specific exception available under this statute.

The schedule for Police Department personnel

It is the opinion of this office that the schedule of police department personnel could reveal security procedures, investigative training information and/or internal security information. You have asserted that the records do, in fact, contain information subject to the privilege afforded by La. R.S. 44:3(A)(3). Therefore, we are of the opinion that these records may be protected from disclosure due to La. R.S. 44:3(A)(3).

Payroll records for each officer including total number of hours worked during a particular fiscal year

Although you also assert La. R.S. 44:3(A)(3) protects the payroll records for each officer, including the number of hours worked, it is the opinion of this office that

¹ *Title Research Corp. v. Rausch*, 450 So.2d 933 (La. 1984); *Landis v. Moreau*, 00-1157 (La. 2/21/01), 779 So.2d 691.

² La. R.S. 44:31.

revealing payroll records and hours worked does not disclose any information which is protected by La. R.S. 44:3(A)(3). No information has been provided to us which would indicate that the public money paid to each officer will compromise any of the information protected by La. R.S. 44:3(A)(3). Therefore, we are of the opinion that the payroll records for each officer and the total number of hours worked during a particular fiscal year must be disclosed.

We observe, however, that private or unlisted home telephone numbers of public employees and home telephone numbers of employees who request that the number remain confidential are exempt from disclosure. La. R.S. 44:11. In addition, while gross wages would be considered a public record, a public employee's social security number and all other tax information, such as withholding amounts, deductions, exemptions, etc., must remain confidential. See La. R.S. 44:11; La. Atty. Gen. Op. Nos. 93-445(A) and 90-272. We also note the existence of La. R.S. 40:2532, which provides:

[n]o person, agency or department shall release to the news media, press or any other public information agency, a law enforcement officer's home address, photograph, or any information that may be deemed otherwise confidential, without the express written consent of the law enforcement officer, with respect to an investigation of the law enforcement officer.

To the extent the payroll records you reference include information which is protected, as referenced above, such records would have to be redacted prior to disclosure pursuant to the Act.

A list of all training received by any officers who conduct training

La. R.S. 44:3(A)(3) protects records containing security procedures, investigative training information or aids, investigative techniques and/or internal security information. It is the opinion of this office that a list of all training received by officers who conduct training could reveal protected information. Therefore, we are of the opinion that the training received by officers is protected from disclosure due to La. R.S. 44:3(A)(3).

Copies of all Police Department policies, rules and regulations

Any information in the police department policies, rules, and regulations which would reveal information described by La. R.S. 44:3(A)(3) will be protected from disclosure.³ However, it is likely that the policies, rules and regulations also include information which would not reveal protected information, e.g., leave policies, benefits, usage of

³ See, for example, *Major v. City of Baton Rouge*, 2011 WL 1979431 (M.D.La. 2010), which concluded some of the customs and policies of the Baton Rouge Police Department were protected by La. R.S. 44:3(A)(3), such as section on: Video Surveillance Cameras; Arrest Procedures; Departmental Temporary Detention Facilities; Communications Procedures; Special Response Procedures; Investigative Procedures; Administrative Intra-Divisional Procedures; Uniform Patrol Intra-Divisional Procedures; and Criminal Investigations Intra-Divisional Procedure.

public computer equipment, etc. A custodian has a duty to segregate protected information from non-protected information in requested records so that a requestor may view the non-protected information.⁴ Any records which would not reveal the types of information described by La. R.S. 44:3(A)(3) should be disclosed pursuant to a public records request. However, any records within these documents which do contain information described by La. R.S. 44:3(A)(3) are protected from disclosure.

Whether or not any police officers have purchased any firearms on their own

There is no obligation to provide information which a public body is not in possession of and there is no obligation to produce records that do not exist. You have indicated the police department does not maintain records of personal purchases of firearms by police officers. The police department should therefore respond that there are no such records in existence or in the custody of the department.

An inventory of all ammunition and firearms owned by the police department

Revealing this information would clearly reveal internal security information and therefore any such inventory would be protected from disclosure due to La. R.S. 44:3(A)(3).

In conclusion, it is the opinion of this office that the schedule for police department personnel, a list of training received by officers who conduct training, and an inventory of all ammunition and firearms owned by the police department are all protected from disclosure due to La. R.S. 44:3(A)(3). Some of the police department policies, rules and regulations will be protected from disclosure, and some of these records, which do not tend to reveal any information protected by La. R.S. 44:3(A)(3), would have to be provided to a requestor. The payroll records for each officer, including the total number of hours worked during a fiscal year, will have to be provided to a requestor, subject to the redaction of any confidential information that may appear therein. Lastly, the police department is not obligated to provide a record to a requestor when such record does not exist, or when the department is not the custodian of the requested record.

⁴ La. R.S. 44:32.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY: _____
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Assistant Attorney General

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SYLLABUS

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DATE ASSIGNED:

DATE RELEASED: May 3, 2012

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