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State of Louisiana
DEPARTMENT OF JUSTICE
CIVIL DIVISION
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September 5, 2018
OPINION 18-0115

Sharon W. Hewitt
Louisiana Senator, District 1
2055 2nd Street, Suite A
Slidell, LA 70458

90-C PUBLIC RECORDS

La. Const. art. XII, § 3
La. C.C. art. 9
La. R.S. 1:4
La. R.S. 44:1, *et seq.*

All records described in La. R.S. 44:1(A)(2), are public records of the State of Louisiana. Records that do not conform to the definition provided by the Louisiana Legislature are not subject to the provisions of Title 44 of the Louisiana Revised Statutes.

Dear Senator Hewitt:

Our office received your request for an opinion relative to the Louisiana Public Records Law, hereinafter referred to as the "LPRL," La. R.S. 44:1, *et seq.* You cited a request made upon your office for certain information, including the following:

The number of Facebook users who were banned, muted, blocked, or otherwise restricted from the Facebook page "facebook.com/SenatorSharonHewitt/," along with the names of these individual Facebook users, and the reasons for restrictive actions on those users.

The number of Twitter users who were banned, muted, blocked, or otherwise restricted from the Twitter profile "twitter.com/sharonhewitt," along with the names of these individual Twitter users, and the reasons for restrictive actions on those users.

Your request explained that neither of the social media accounts referenced are funded with taxpayer dollars, are not required by the Louisiana Senate, are not linked to the official senate webpage, and are not supported by senate staff. Your request seeks this office's opinion as to whether the requested information is a public record.

The right of access to public information is guaranteed by La. Const. art. XII, § 3, which provides that no person shall be denied the right to examine public documents, except in cases established by law. At the outset, our office notes that there is no duty to create a public record for the sole purpose of fulfilling a request for information. Louisiana courts have held that a custodian "need only produce the existing records containing the requested information, and is not required to create new documents in the format requested." *Cox v. Bello*, 14-0759 (La. App. 1 Cir. 12/23/2014), 2014 La. App. Unpub. Lexis 771, 8; See also *Nungesser v. Brown*, 95-3005 (La. 2/16/1996), 667 So. 2d 1036,

1037; See also *Williams Law Firm v. Board of Supervisors of Louisiana State University*, 03-0079 (La. App. 1 Cir. 4/2/04), 878 So.2d 557, 563.


Louisiana Revised Statutes 44:1(A)(2)(a), defines a public record as follows:

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 the Constitution of Louisiana.

The statutory and jurisprudential rules for the interpretation of state statutes direct that when a law is clear and unambiguous, it must be given effect as written. La. C.C. art. 9, La. R.S. 1:4. The Louisiana Legislature is clear that whether an existing record is a public record and subject to the provisions of the LPRL depends on whether it exists because of activity 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." La. R.S. 44:1(A)(2). To be sure, the use of Facebook and Twitter by state senators is not required by any existing provision of law. Therefore, to the extent that such records exist, and mindful that you have indicated that the social media accounts are not taxpayer funded, not required by the Louisiana Senate or any other state law, not limited to official webpages, and are not supported by government staff, it is the opinion of this office that information regarding the number of Facebook and Twitter users banned, muted, blocked, or otherwise restricted from the Facebook page "facebook.com/SenatorSharonHewitt/," and Twitter profile "twitter.com/sharonhewitt," along with the names of these individual users, and the reasons for restrictive actions on those users is not public record. Furthermore, it is the opinion of this office that any records created through activity that was not "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," does not meet the definition of a public record provided in La. R.S. 44:1(A)(2).

We hope this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

With best regards,
JEFF LANDRY
ATTORNEY GENERAL

BY: 
Luke Donovan
Assistant Attorney General