

October 8, 2015
OPINION 15-0056

90 – C – PUBLIC RECORDS

La. Const. Art. XII, §3

La. R.S. 44:1 *et seq.*

Mr. Rickey J. Huval, Sr.
Iberia Parish Assessor
300 Iberia Street, Suite B-100
New Iberia, LA 70560

If the assessment rolls are maintained by the assessor in a manner which permits a copy to be easily made onto a disc, he or she must provide an electronic copy of the records in response to a public records request, but may assess a reasonable fee to the requestor in doing so. An individual can make a public records request to the sheriff or clerk of court for public information delivered to either by the assessor.

Dear Mr. Huval:

Our office received your request for an opinion concerning the application of Louisiana's Public Records Act, La. R.S. 44:1 *et seq.*, to a request for data from the Assessor. Your request does not dispute the application of the Public Records Act to your office or to the particular records at issue. Rather, your request concerns questions which have arisen in the course of your office providing access to records under these laws.

Your request letter notes that your office possesses information from the tax rolls in an electronic format. You indicate that the preparation of this information in this format costs tens of thousands of dollars, and that your office contracts with a software company to convert the information gathered to an electronic format and to make tax roll information publicly available on your website. This software company provides a copy of the disc containing information you gather in the process of preparing the tax rolls to the sheriff, as tax collector; the clerk of court, as recorder of mortgages; and the Louisiana Tax Commission.

Your request further indicates that all of the public information is posted on your website as well as the website of the Louisiana Tax Commission. You state that you have received a request to prepare a disc containing the records at issue for ten dollars.

In light of the above, you have asked whether you are required to provide the requestor with the information for what you view as a nominal fee, or whether you may respond by referring them to your website. Additionally, you ask whether the requestor is permitted to request the same information from the sheriff or clerk of court in an effort to avoid paying the Iberia Parish Assessor for copies of the records.

As a general matter, we note that "[a]ll taxable property in the state, except public service properties, shall be assessed by the several assessors." La. R.S. 47:1957(A).

Assessors are charged with the responsibility to list and assess all property within their respective parishes, except for property subject to direct assessment by the tax commission. *Id.* Specifically, as described by La. R.S. 47:1957(B), all taxable property shall be listed and assessed at the proper percentage of its fair market or use value.

Once the assessment lists have been approved by the parish governing authorities as boards of reviewers, La. R.S. 47:1993(A)(1) directs for copies of the grand recapitulation sheet to be delivered to the legislative auditor and for copies of the assessment rolls to be delivered to: the tax collector, the Louisiana Tax Commission and the recorder of mortgages. Specific to your inquiry, La. R.S. 47:1993(A)(2) provides:

If an assessor uses electronic data processing equipment to prepare the assessment rolls, the assessment data produced shall be made available upon request in a useable electronic media. The assessors shall prepare any such electronic assessment roll made available to tax collectors in American Standard Code for Information Interchange (A.S.C.I.I.) and may charge the tax collector a fee for preparing such information. This fee shall not exceed the actual cost of reproducing a copy of the assessment data in a useable electronic media and may be based upon the amount of data reproduced, any costs associated with converting to A.S.C.I.I., the amount of time required to reproduce the data, and any office supplies utilized in compiling and reproducing the data.

You have asked whether you are required to provide an electronic copy of the information on a disc or whether you may simply refer the requestor to your website. As La. R.S. 47:1993(A)(2) makes clear, if you utilize electronic data processing equipment in the preparation of assessment rolls, you must produce the assessment data in a useable electronic media. You have indicated that your office does utilize electronic data processing equipment in the preparation of assessment rolls, and further, that you, through making such information available via a searchable database on your website, also make the data available in a useable electronic media. In other words, an individual may look at your website, capture and copy the data which appears when looking up a particular property, and then paste that data into a separate document, from which he or she could compile information about separate, multiple properties. However, your inquiry asks whether you must also provide a copy of the electronic files onto a separate disc, if requested to do so. In our view, the response to this question depends upon whether you maintain the information in a format from which you could copy the files onto a disc.

In La. Atty. Gen. Op. No. 11-0210, you asked this office for an opinion about providing electronic copies to a requestor in a scenario where you did not maintain the information in the format requested. Thus, we proceed with this opinion request assuming that you do maintain the information in a manner which permits you to provide a copy onto a disc.

The right of access to public information is guaranteed by La.Const. art. XII, § 3, which provides, “[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 liberal construction of the Public Records Law, 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 The most directly potentially applicable exception to the information at issue is La. R.S. 47:2327, which is incorporated as an exception to the Public Records Act at La. R.S. 44:4.1(B)(32).³ To the extent the requested record includes material specifically exempt from inspection, a custodian may separate the nonpublic material, and then make the public record available for examination.⁴

The issue of whether or not the fundamental right of access includes the right to obtain electronic copies of those records was addressed in *Johnson v. City of Pineville*.⁵ In determining that the requestor was entitled to electronic copies of e-mails requested, the court reasoned:

We live in an age of technology in which private individuals, as well as government, can use information technology to create astronomical numbers of documents. To allow Pineville to create such voluminous records using information technology and then deny the use of that same technology to the public reviewing those records would strike directly at the heart of the public’s fundamental right of access to public records that is guaranteed by the Louisiana constitution. When confronted with public records of goliath proportions, the average citizen’s fundamental right of access would prove illusive if he is denied the opportunity to use the very technology which helped create the overwhelming amount of information. To reproduce over 13,000 e-mails on paper, when other safe, efficient, and reasonable means are available, is unnecessarily laborious, costly,

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.

³ La. R.S. 47:2324 references the assessor’s ability to utilize self-reporting forms in obtaining information from property owners. Specific to disclosure of such forms, La. R.S. 47:2327 provides:

Forms filed by a taxpayer pursuant to this Act shall be confidential and shall be used by the assessor, the governing authority, and the Louisiana Tax Commission solely for the purpose of administering the provisions of this Act. Such forms shall not be subject to the provisions relative to public records as set forth in Title 44 of the Louisiana Revised Statutes of 1950, provided however, that such forms shall be admissible in evidence and subject to discovery in judicial or administrative proceedings according to general law relating to the production and discovery of evidence.

⁴ La. R.S. 44:32(B).

⁵ 2008-1234 (La. App. 3 Cir. 7/8/09), 9 So.3d 313.

wasteful, and conflicts with the legislative intent of making public records as available as possible.⁶

As our office noted in La. Atty. Gen. Op. No. 11-0219, the above discussion from the Third Circuit Court of Appeals does not intend to stand for the conclusion that a requestor may always dictate the exact manner in which a public record is produced. However, it is the opinion of this office that if the custodian maintains a record requested in two electronic formats: one which may be easily transferred to a disc and also in a searchable database on a website, it is reasonable to request the custodian provide an electronic copy on a disc in addition to providing public access on the website.

Your request expresses concern for transferring an electronic copy of this information to a disc for a “nominal fee” since these records cost a significant amount of public dollars for your office to prepare. Your request provides no information about the actual cost your office would incur in reproducing the record in this format.

The Public Records Act allows a custodian to charge a “reasonable fee” for making copies of public records.⁷ What constitutes a reasonable fee is ultimately a fact-specific question.⁸ However, we do note that the Public Records Act is not designed to recoup costs incurred by a public entity in preparing the records requested. Similar to the scenario you have presented, though, when considering what constituted a reasonable fee for providing access to an electronic copy of the assessment rolls, the First Circuit Court of Appeals stated: “This fee does not include the original cost of generation of the information or the actual value of the information. It does include, at a minimum, the actual costs for making the copies.”⁹

You also ask whether someone is permitted to request a copy of the disc your office delivers to the sheriff or clerk of court. While your office creates the record, the sheriff and clerk of court receive a copy of this record in the course and scope of performing their public duties.¹⁰ There is nothing specifically in the law which makes confidential the records you have submitted to the sheriff and clerk of court.¹¹ Thus, there is nothing

⁶ *Id.* at 319-20.

⁷ Since the office of the Iberia Parish Assessor is not a state agency, La. R.S. 44:32(C)(1)(a) governs. La. R.S. 44:32(C)(2) addresses the fees which may be assessed for providing copies of public records held by state agencies.

⁸ “...the question of what constitutes a reasonable fee turns on the facts and circumstances of each individual request.” *Granger v. Litchfield*, 94-0114 (La. 1 Cir. 11/10/94), 645 So.2d 1262, 1265, *writ granted in part, judgment reversed in part* by 94-3017 (La. 3/3/95), 649 So.2d 397 (reversal not related to the conclusions cited within this opinion).

⁹ *Id.* at 1264.

¹⁰ The definition of “public record” in La. R.S. 44:1(A)(2)(a) specifically includes “[a]ll records...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...”

¹¹ Again, we note the confidentiality of the forms referenced in La. R.S. 47:2324, if applicable, which would be proper to exclude from production.

which prohibits someone from making a request to the clerk of court or sheriff for records prepared by you, and nothing requiring the clerk of court or sheriff to refer a requestor to you as the exclusive source for copies of this data on a disc. Further, a similar argument was rejected by the *Granger* court, wherein the assessor filed suit to enjoin the sheriff from providing a copy of the computerized tax rolls to a requestor, arguing that the requestor should be required to obtain the record from the entity that created the record.¹² The court recognized the sheriff had custody of the computerized tax rolls; the public was entitled to make a request of a copy of the record from the sheriff, despite the fact that the assessor incurred the cost in creating the record; and it was reasonable for the sheriff to charge the requestor the actual fee incurred by the sheriff in making the digital copy of the record.

In conclusion, it is the opinion of this office:

- If you maintain public records in a manner which permits you to easily make a copy onto a disc, you are required to provide such a copy to a requestor, even if you also make the data publicly available via a searchable database on a website.
- You are permitted to charge a “reasonable fee” for providing a copy of a public record. While this fee is not intended to represent the cost incurred by your office in generating the information or the value of the information, it does include the actual costs your office incurs in making the copies.
- An individual is permitted to make a request to the sheriff or clerk of court for the assessment information you forward to each pursuant to La. R.S. 47:1993. Either is permitted to charge a fee for providing access to this information under the Public Records Act.

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: _____
Emalie A. Boyce
Assistant Attorney General

JDC: EAB

¹² 645 So.2d 1262.

SYLLABUS

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La. R.S. 44:1 et seq.

If the assessment rolls are maintained by the assessor in a manner which permits a copy to be easily made onto a disc, he or she must provide an electronic copy of the records in response to a public records request, but may assess a reasonable fee to the requestor in doing so. An individual can make a public records request to the sheriff or clerk of court for public information delivered to either by the assessor.

Mr. Ricky J. Huval, Sr.
Assessor, Iberia Parish
300 Iberia Street, Suite B-100
New Iberia, LA 70560

DATE ASSIGNED:

DATE RELEASED: October 8, 2015

Emalie A. Boyce
Assistant Attorney General