



## **JOB AIDS AND RESOURCES**

### **Public v. Private Information**

#### **Public Records**

A public record is any document or group of documents which has been used, prepared, processed or retained for any business or function under the authority of the Constitution or laws of this state in the performance of a governmental function, unless excepted in the “public records laws” or the Constitution. This includes any reproduction of any document.

[La. R.S. 44:1 et seq](#) are the primary laws that established the public policy of the State of Louisiana as it deals with public records. Based upon the reading of these laws, the state has established a broad view of allowing access to public records.

However, the Constitution provides that a person has a legitimate right to privacy in certain things, including information that the State as an employer has on its citizens. Therefore, before an appointing authority can produce information concerning his employees, it must determine what is public and what is not.

#### **Public Records v. Public Information**

Not all Public Records contain public information. Some information contained in a public record is confidential. A record could be wholly public in which case any citizen can request to review the record; wholly private, in which case it cannot be disclosed to the public; or a public record with private information contained in it. This is especially true in employee personnel records.

Confidential information is established either through an exception to the public records laws, or as a result of a court decision. Information that is usually confidential is that information in which an individual has a reasonable expectation of privacy.

Confidential information is to be protected from public access, however, it is not necessarily protected from entities or persons within the government who have a legitimate need to know based upon a legitimate governmental reason.

#### **Request for Information**

A public entity is required to respond to a public records request for information within 72 hours. If the record requested is not in “active use” the record must be produced immediately. However, the only information that must be produced is that information which is public information. If a document is a public document but contains private or confidential information, the private or confidential information must be removed or redacted before an agency can respond to the public records request.

Each agency should have a written policy regarding how it will respond to all public records request.

### **Segregation of Files**

State Civil Service recommends that agencies maintain personnel documents which contain only confidential information separately from the “public” personnel documents of its employees.

Medical records of any type and I-9 forms must be maintained in locked files which are entirely separate from other documents.

A personnel document that is a public document but contains confidential information should be kept in the “public” portion of an employee’s personnel record. However, if that document becomes the subject of a public records request, the agency must assure that the confidential information is redacted.

### **Laws that Impact Public Records**

As it relates to personnel files, the following is a list of acts that might impact a public records request. It is imperative that an agency is familiar with these laws in conjunction with the public records act of Louisiana.

- Louisiana Public Records laws – [La. R.S. 44:1 et seq](#)
- [Americans with Disabilities Act](#)
- [Family Medical Leave Act](#)
- [Health Insurance Portability and Accountability Act \(HIPAA\)](#)
- Louisiana Drug Testing – [La. R.S. 49:1001-1021](#)
- Vital Records – [La. R.S. 40:32 – 40:92](#)

**NOTE:** Information regarding the retention of personnel records or examples of public vs. confidential information may be found in [Job Aids & Resources: Confidential v. Public Information](#).