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DEPARTMENT OF JUSTICE
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OPINION 13-0141

Mr. Jacob D. Dagate
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Thirty-Second Judicial District
7856 Main Street
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Houma, Louisiana 70360

90 – C – PUBLIC RECORDS

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

Personal e-mails sent on a public e-mail account are not "public records" subject to production under the Public Records Act when the records have no relation to the function of the public body, there is no evidence of illegal activity, and there has been no finding of the public body that disciplinary action is appropriate based on the records at issue.

Dear Mr. Dagate:

Our office received a request from you for an opinion concerning a public records request received by the Houma-Terrebonne Housing Authority ("HTHA"). Your letter states that a request was received by the HTHA seeking a copy of any and all e-mails which are political in nature sent by HTHA's Executive Director on ten specific dates. The request specifies that, as used in the request, "political in nature" refers to any and all documents that: (1) refer to a political party or candidate for office; (2) refer to a political party or elected official; (3) refer to any issue in controversy that has been written about in the media; and (4) are meant to advocate for a particular party or advocate against a particular party or candidate.¹

After reviewing potentially responsive e-mails to the request, it was determined that six or fewer of the e-mails that could be considered "political in nature," as defined by the requestor, were personal e-mails that had no relation to the function or business of the HTHA. Relying on La. Atty. Gen. Op. No. 10-0272 and the definition of "public record" provided by La. R.S. 44:1(A)(2)(a), you, as the attorney for HTHA, concluded that personal e-mails transmitted by the Executive Director which have no relation to any function or business of the HTHA are not "public records" as defined by the Public Records Act. Your request letter specifically asks whether the Office of the Attorney General maintains the position taken in La. Atty. Gen. Op. No. 10-0272 that e-mails of a

¹ The requestor, in follow up correspondence objecting to the HTHA's response to his request, refers to La.Const. art. X, § 9, which prohibits a civil service employee from participating or engaging in political activity, except to exercise his rights as a citizen to express an opinion privately, to serve as a commissioner at the polls, and to cast his vote as he desires. See also La. R.S. 33:2429. We note that La.Const. art. X, § 9(C) defines "political activity" as "an effort to support or oppose the election of a candidate for political office or to support a particular political party in an election. The support of issues involving bond indebtedness, tax referenda, or constitutional amendments shall not be prohibited." Clearly, the definition of "political activity" provided by the requestor to the HTHA is broader than the definition of "political activity" under La.Const. art. X, § 9.

purely personal nature sent on a public e-mail account and having no relation to public business are not public records subject to disclosure under La. R.S. 44:1(A)(2)(a).

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 . . . examine public documents, except in cases established by law.” The Public Records Act, 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 Act, with any doubt being resolved in favor of access.² Unless an exception to the Public Records Act 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.³

A “public record” is defined by La. R.S. 44:1(A)(2)(a) as including:

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 . . . except as otherwise provided in this Chapter or the Constitution of Louisiana.

As our office stated in La. La. Atty. Gen. Op. No. 10-0272,

[a] record’s mere existence in a public office does not automatically make such document a “public record.” It is the opinion of this office that the definition of “public records” requires a content-driven analysis for a connection between the record and the conduct of public business or the functioning of a public body.

The opinion then references La. Atty. Gen. Op. No 79-242, which concluded that the statute defining a “public record,” La. R.S. 44:1, was not intended to include everything

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

³ La. R.S. 44:31.

which any public official may happen to reduce to writing and includes "only those writings which are used in the performance of the functions of the public body."⁴

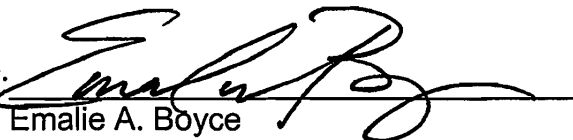
La. Atty. Gen. Op. No. 10-0272 is not intended to stand for the blanket conclusion that any private e-mails sent on public accounts are not "public records" under the Public Records Act. However, in the facts you have presented, where the records have no relation to the function of the HTHA, where there is no evidence of illegal activity, and where there has been no finding of the HTHA that disciplinary action is appropriate based on the records at issue, we reach the same conclusion reached in La. Atty. Gen. Op. No. 10-0272 that the purely personal e-mails at issue are not subject to production under the Public Records Act. If the public body had determined that illegal activities were conducted or that such records presented cause for disciplinary action, this would factor into the content-driven analysis that should be performed by the custodian in examining the connection between the record and the conduct of public business or the functioning of the public body, and could change the conclusion reached in this opinion.⁵

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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JDC: EAB

⁴ See also La. Atty. Gen. Op. Nos. 08-0312 (a handwritten note was not a public record subject to disclosure when such note was not used, prepared, possessed or retained for use in the conduct, transaction, or performance of official duties), 79-242 and 90-364 (only those writings relevant to the functioning of the public body were subject to public access).

⁵ Please note that simply because these facts could change the conclusion as to whether the record is a "public record" as defined by La. R.S. 44:1(A)(2)(a), reaching such a conclusion would not automatically result that the record is subject to production. The custodian would then be required to determine whether the record is subject to disclosure or if there is an exception to production that applies.