

Public records fights

Legislature asked to open governor's records

By [MARSHA SHULER](#)

Advocate Capitol News Bureau

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The Jindal administration will once again fight legislative efforts to expand public access to Governor's Office records.

Gov. Bobby Jindal's chief lawyer, Stephen Waguespack, called the package of bills filed by two north Louisiana Republican lawmakers "a distraction from the real challenges we have," particularly the state budget.

"The comprehensive and balanced bill we passed last year serves the state well," Waguespack said.

But state Rep. Wayne Waddell, of Shreveport, and state Sen. Robert Adley, of Benton, strongly disagree, as do government research and media interests. They contend the law, passed in the name of transparency, may actually shield more records from public scrutiny now than were covered under previous law.

Waddell said the public needs access to what happens in the executive office, where policies are made, as are decisions on how to spend huge amounts of taxpayer dollars.

"I don't know what could be more important," Waddell said. "The public is beginning to realize it is our money."

Waddell said the knowledge is particularly important now as Jindal is making decisions on how the state will cope with a \$3 billion revenue shortfall in the next two budget years.

"I not only want the people to know what the governor is doing to them, but what the governor is not doing. The only way to know is to open up the records," Waddell said.

Public Affairs Research Council senior analyst Ann Heath said the measures seeking to open up the Governor's Office are about the only bright spots on the public records front during this legislative session.

“Most of the other bills so far are moving in the wrong direction,” said Heath, who specializes in public records and open meetings laws.

Heath said there are other bills that would exempt e-mail from public record; and shield from public view personnel and disciplinary actions of public employees, including law enforcement officers.

“It’s a watering down of the code that we do not support,” Heath said.

The legislative public records battle shaping up comes as The Public Policy Research Lab at LSU issued its spring 2010 statewide survey in which respondents gave relatively low marks for transparency in state government.

“How participants graded the transparency of state government has a significant effect on whether they believe that state government is more, or less, corrupt than it has been in the past,” survey analysts wrote.

Fifty-one percent of those who gave the state an “F” in transparency also said that state government is more corrupt now, compared with 8.8 percent of those who gave the state an “A” for transparency, the survey found.

“Clearly, one of the keys to decreasing perceptions of corruption in the state government is to increase transparency,” analysts concluded.

Jindal campaigned for governor on a platform of transparency in government that he said would help the state shed its reputation of being corrupt. Legislation seeking disclosure of information about the workings of state government and those in charge of decisions topped his first year in office.

Waddell and others said the openness stops at the Governor’s Office door.

Jindal pushed legislation in the 2009 session of the Legislature which became law that shielded documents the governor uses in the deliberative process, including those related to the state budget, from the public. The 2009 changes also sheltered communications among top Governor’s Office staff.

The Louisiana Press Association, a trade group representing daily and weekly newspapers around the state, endorsed the measure. But the state’s largest newspapers, The Advocate and The (New Orleans) Times-Picayune, opposed the measure.

Proposals up for consideration in this legislative session would declare that Governor’s Office records are public and then delineate the exceptions that would keep specific documents secret.

Under Waddell's House Bill 307, records of the Governor's Office reflecting "pre-decisional mental impressions, advice, proposal, or opinions created for the purpose of assisting the governor in the formulation of a decision" would be exempt from disclosure.

However, the exemption would not apply to records of any agency, office or department transferred or placed within the Governor's Office or to records of any other executive branch agency. Removed would be a provision that allowed budget-related recommendations to be kept from public view for six months from the date the document was prepared.

Another Waddell bill, HB501, would require records related to "pre-decisional advice" given the governor to be made public within 10 years on a schedule that would be set by the governor.

Other Waddell legislation would allow economic development negotiations to be kept confidential for a set time period, but the exemption from disclosure would be repealed at the end of Jindal's current term of office.

Under Adley's legislation, Senate Bill 593, Governor's Office records related to "executive deliberations of the governor and intra-office communications of the governor and his staff shall be privileged from disclosure."

The exemption would not apply to records of any agency that are transferred or placed in the Office of the Governor or to the records of any other executive branch agency.

The Adley bill would require the governor and his internal staff to preserve the records that are kept off-limits and transfer them to State Archives at the end of the governor's term of office. The records would become public 10 years after the creation of the documents.

Most other legislation filed by lawmakers attempts to shield government records from public access.

State Sen. Karen Peterson, D-New Orleans, sponsored Senate Bill 582, which would exempt e-mail from public records. However, documents that otherwise would be public that are attached to or incorporated in e-mail would remain public.

Peterson was the subject last year of a public records request by Louisiana Republican Party Chairman Roger Villere. Villere's request for e-mail, travel and other documents came after Peterson criticized Jindal for opposing legislation that would have opened his office records to public scrutiny.

As a legislator, she said, her records were an open book and encouraged Jindal's executive counsel to file a public records request.

State Sen. J.P. Morrell, D-New Orleans, has legislation that would make it clear that electronic mail is public record.

State Sen. Danny Martiny, R-Metairie, wants to close personnel records of any public employee and the records of any internal investigation or proceeding related to allegations of misconduct by a public employee. The records could still be used in judicial or administrative proceedings under Senate Bill 280.

“I personally don’t think every record of a public employee should be public,” Martiny said. “There’s a defect in our public records law.”

Martiny’s law firm made \$188,028 representing the Jefferson Parish Sheriff’s Office in 2008, according to a disclosure filed in January.

Martiny said he may turn the legislation into a study.

Senate Bill 275, sponsored by state Sen. David Heitmeier, D-New Orleans, would exempt personnel files of law enforcement officers from public record. The final determination of any investigation involving the officer and legal grounds for action would become public record.

Another Martiny bill, SB279, would provide an exemption from public scrutiny records subpoenaed by state or federal grand juries or sought by any law enforcement agency through a search warrant.

The records custodian would notify the person requesting the information that it was unavailable because of the investigations. If the investigative body said it would not interfere with its work, the records could be released.

Martiny said SB279 was prompted by Jefferson Parish government investigations that have brought about indictments of public officials. Numerous public records requests were filed — many for records subpoenaed by a grand jury, he said.

“We may have been compromising an investigation,” Martiny said, in regard to records release. “We are trying to meet with the district attorneys, U.S. attorney and attorney general to see if they perceive it to be a problem.”