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DEPARTMENT OF JUSTICE  
CIVIL DIVISION  
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BATON ROUGE  
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May 18, 2017  
OPINION 17-0044

The Honorable J. Rogers Pope  
Louisiana House of Representatives  
P.O. Box 555  
Denham Springs, LA 70727

90-C PUBLIC RECORDS

La Const. art. XII, § 3  
La R.S. 44:1 *et seq.*  
La R.S. 44:31  
La R.S. 44:32

Dear Mr. Pope:

A person who makes a valid public records request to inspect documents and at the time of inspection uses a personal hand-held scanner to copy said public records is not obligated to pay a fee for each page copied.

You have requested an opinion of the Attorney General relative to Louisiana's Public Records Law, La. R.S. 44:1 *et seq.* Specifically, you inquired whether a person who makes a valid public records request to inspect documents and at the time of inspection uses a personal hand-held scanner to copy said public records is obligated to pay a fee for each page copied. For the reasons discussed below, it is the opinion of this office that such a person is not obligated to pay a fee for each page copied.

The public's right to public records is a fundamental right guaranteed in the Louisiana Constitution: "No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law." La. Const. art. XII, § 3; *Title Research Corp. v. Rausch*, 450 So.2d 933, 936 (La. 1984). The Legislature enacted the Public Records Law, La. R.S. 44:1 *et seq.*, to implement this constitutional guarantee. *First Commerce Title Co. v. Martin*, 38,903 (La. App. 2 Cir. 11/17/04), 887 So.2d 716, 718; see also *Brown v. Serpas*, 12-1308 (La. App. 4 Cir. 03/20/13), 112 So.3d 385, 388. The constitutional provision and statutes must be construed liberally in favor of open access to public records, and such access can be denied only where the law specifically and unequivocally so provides. *Title Research*, 450 So.2d at 936; *Posner v. Gautreaux*, 15-1196 (La. App. 1 Cir. 03/03/16), 192 So.3d 120, 122. According to the Louisiana Supreme Court, any doubt as to the public's right of access to records must be resolved in favor of disclosure. *Landis v. Moreau*, 00-1157 (La. 02/21/01), 779 So.2d 691, 694.

"[A]ny person of the age of majority may inspect, copy, or reproduce, any public record," and "any person may obtain a copy or reproduction of any public record." La. R.S. 44:31(B).<sup>1</sup> These rights are alternative, and the requester has the exclusive choice over which right to exercise. *Title Research*, 450 So.2d at 937; *Johnson v. Broussard*, 12-1982 (La. App. 1 Cir. 06/07/13), 118 So.3d 1249, 1257. The custodian's duty in response to a proper public records request is to present the public records or provide copies thereof, in accordance with the request. La. R.S. 44:32(A) and (C)(1) and (2);

<sup>1</sup> Prior to a 2004 revision of La. R.S. 44:31, only a major could obtain a copy of a public record pursuant to the Public Records Law. See 2004 La. Acts 759.

*Baker v. City of Leesville*, 13-480 (La. App. 3 Cir. 11/20/13), 127 So.3d 107, 110. La. R.S. 44:32 provides for, among other things, the fees that a public records custodian may charge in connection with a public records request and permits the collection of a fee in the event that the request is for copies of public records. La. R.S. 44:32(C)(1) and (2). However, “[n]o fee shall be charged to any person to examine or review any public records,” except as provided in La. R.S. 44:32. La. R.S. 44:32(C)(3) (emphasis added).<sup>2</sup>

The courts of this State, including the Supreme Court, have consistently held that the rights afforded to the public in the constitution and Public Records Law include the right to make copies of public records with their own equipment without paying a fee to the custodian. The Supreme Court in *Title Research Corp. v. Rausch*, 450 So.2d 933 (La. 1984), ordered the St. Tammany Parish Clerk of Court to provide public records to the plaintiffs for inspection and permit the plaintiffs to reproduce the records using their own equipment, free of charge. Similarly, in *Thornton v. Dep’t of Pub. Safety*, 536 So.2d 595 (La. App. 1 Cir. 1988), the First Circuit held that the Department of Public Safety and Corrections could not charge a fee to a person who wished to examine and make his own copies of public records, finding that the Public Records Law permits a custodian to charge a fee for providing a copy of a record but “does not permit the custodian to charge a fee to a person who only wishes to examine or review a public record.” *Id.* at 597.<sup>3</sup> The Fourth Circuit in *Alliance for Affordable Energy v. Frick*, 96-1763 (La. App. 4 Cir. 05/28/97), 695 So.2d 1126, held that the plaintiffs were entitled to make their own copies of public records without paying a fee to the custodian. “Although the custodian may charge a reasonable fee for copies which the custodian makes, the person requesting the documents may exercise his right in a manner authorized by the Public Records Law and choose to make the copies.” *Id.* at 1137. Finally, in *First Commerce Title Co. v. Martin*, 38,903 (La. App. 2 Cir. 11/17/04), 887 So.2d 716, the Second Circuit ordered the Bienville Parish Clerk of Court to permit use of a hand-held scanner by persons wishing to make copies of public records without payment of a fee.

In light of the relevant statutory language and prior jurisprudence, and in accord with an earlier Attorney General’s opinion on a related issue,<sup>4</sup> we conclude that a person who makes a valid public records request to inspect documents and at the time of inspection uses a personal hand-held scanner to copy said public records is not obligated to pay a fee for each page copied.

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<sup>2</sup> The only two instances in which La. R.S. 44:32 provides for fees to be charged to a person merely inspecting public records are (1) if the custodian allows the inspection to take place outside of normal business hours and (2) if a court sets a fee to be charged by the custodian for their own pre-disclosure review of records. See La. R.S. 44:32(A) and (C)(3).

<sup>3</sup> See also *Cummings v. Kempf*, 570 So.2d 133, 135 (La. App. 3 Cir. 1990) (citing *Thornton* and rejecting fee charged by custodian where requester sought to make his own copies of records).

<sup>4</sup> See La. Atty. Gen. Op. No. 08-0179.

We trust 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:   
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