

LAFAYETTE
CONSOLIDATED
GOVERNMENT
CENTRE DE LA CULTURE ACADIENNE ET CREOLE



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May 3, 2007

Mr. Garo Alexanian
CAN TV
Post Office Box 750214
Forest Hills, New York 11375

Re: Request for Documents

Dear Mr. Alexanian:

This responds to your letters dated April 17, and May 1, 2007. Although the latter item of correspondence is styled as an "Appeal of Records Access Denial," I know of no such procedure and, in any event, there has been no denial of your right to inspect or copy public records. That you would attempt to so characterize the situation is nothing more than posturing. Your reference to La. R.S. 44:31.1 as supposed authority for this "appeal" is interesting as it relates to a public records request by "an individual in custody after sentence following felony conviction who has exhausted his appellate remedies," a circumstance which I presume is not applicable here.

While, in your letter dated April 17, 2007, you place much emphasis on the word "access," that word appears in the court decision to which you have referred, not in the text of La. R.S. 44:32 (entitled "Duty to permit examination") which provides that the "custodian shall present any public record to any person of the age of majority who so requests." I have stated on more than one occasion that we are ready, willing and able to "present" to you the non-exempt public records which you desire to inspect and, thereafter, copy.

Contrary to your assertion, the undersigned has not in any manner "misrepresented" or "misquoted" portions of the Public Records Act. Aside from the fact that (as noted below) you have no standing to complain about anyone "misrepresenting" or "misquoting" the law (in view of your egregious mischaracterization of applicable law), my letter of April 11, 2007, did not assert that *all* documents must be reviewed after

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hours. It clearly states that, "in certain (but not all) instances, it might be necessary to review documents in other than regular or normal business hours."

In your letter of May 1, 2007, you cite La. R.S. 44:33A(1) for the supposed duty to segregate the records in question, but conveniently ignore La. R.S. 44:33A(2) which provides the following explicit exception to the statute on which you rely, to-wit:

If, however, segregating the record would be unreasonably burdensome or expensive, or if the record requested is maintained in a fashion that makes it readily identifiable and renders further segregation unnecessary, the official shall so state in writing and shall state the location of the requested record.

If you feel that our prior correspondence has not adequately asserted this position, I hereby inform you that the voluminous records which you have requested are such that segregating them would be unreasonably burdensome or expensive, and such records are located at 705 West University Avenue (sometimes called City Hall) and/or 613 West Pont des Mouton Road (Roicy Duhon Animal Control Center) and/or 900 East University Avenue (the Lafayette Police Department). It is possible that some documents exist in an off-site storage facility, but that has not been finally determined.

I am somewhat confused by your assertion in the second full paragraph of Page 2 of your May 1st letter wherein you advise me that, "under La. R.S. Ann. 44:31 'a person requesting public records may choose one of four options,'" followed by a list of the supposed options. The use of quotation marks and italics (for "emphasis added") encourages the inference that the text of that statute reads as you state. It does not. Nowhere in the text of La. R.S. 44:31 is such stated. Nor is such stated in Attorney General Opinion No. 96-79, cited as authority in that same paragraph.

In fact, Attorney General Opinion No. 96-79 supports our position in that – consistent with the position noted above – it is stated that the custodian of the records "has the discretion to determine whether the records requested would be too burdensome or expensive to separate from the general records," in which case the requestor must be allowed "access to the general material where the information sought is kept and allow [the requestor] to search and review for the desired records on his own accord, with the proper supervision authorized under LSA-R.S. 44:32(A)."

This is precisely the privilege which has repeatedly been afforded you, and any suggestion that you have been denied the access to public records is demonstrably inaccurate.

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You also conveniently fail to recognize the decision of the Louisiana Supreme Court in *Nungesser v. Brown*, 95-1039 (La.App. 1st Cir. 10/6/95); 664 So.2d 132, *writ granted and judgment reversed*, 95-3005 (La. 2/16/96); 667 So.2d 1036. In a *per curiam* reversal of the Court of Appeals, First Circuit, the Supreme Court said:

Granted. Nungesser requested a list which did not exist. Brown was not required to produce a list which did not exist and properly refused Nungesser's request. Accordingly, the judgment of the court of appeal affirming the trial court's judgment ordering Brown to comply with Nungesser's request and imposing civil penalties is reversed.

What you have asked is, in essence (if not in actuality), the making and production of a list which does not exist. There is no obligation upon a custodian to make such a list; the segregation (or not) of the records is at the discretion of the custodian.

I am at a loss as to why you would cite *Elliott v. District Attorney of Baton Rouge*, 94-1804 (La.App. 1st Cir. 9/14/95) which stands for the uncontroversial proposition that a "mail-in request" for public records is permissible. We have never suggested that your written request, sent through the United States mail, is objectionable on that basis and that you must make your initial request in person. On the contrary, we continue to invite you to review the documents as you have requested.

The predicament in which you find yourself is of your own creation. You chose to avail yourself of the right to inspect documents and then to copy documents of your choosing, a right which LCG fully recognizes and affirms. The fact that you might have to actually travel to do so is a necessary consequence of the fact that you live in Forest Hills, New York, not that the documents which you seek are situated in Lafayette, Louisiana.

If you care to inspect the documents, let me know when you would like to do so. This letter writing campaign is totally unproductive and is clear evidence that your paramount interest is to create a publicity event rather than to review the records. Do not mischaracterize the position of the Lafayette Consolidated Government as anything other than full compliance with applicable law and as recognition of your right to inspect the non-exempt public records.

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Should you have any questions, please feel free to call upon me.

Very truly yours,



Patrick S. Ottinger
City-Parish Attorney

PSO/ag-05a

cc: Joey Durel, City-Parish President
Dee E. Stanley, CAO
Becky F. Lalumia, CFO
Chief of Police Jim Craft
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