

public records under the Public Records Act. The Does respond that as a matter of law, the investigative file is not subject to disclosure under the Public Records Act because the file pertains to reasonably anticipated criminal litigation that has not been finally adjudicated or otherwise settled and is therefore exempt from the Act by La. R.S. 44:3. We must begin, then, by determining whether the investigative file constitutes a public record required to be disclosed upon request pursuant to the Public Records Act.

Article XII, sec. 3 of the Louisiana Constitution provides that “no person shall be denied the right to . . . examine public documents, except in cases established by law.” The Louisiana Public Records Law is codified at La. R.S. 44:1, *et seq.* Pursuant to this law, any person of the age of majority may inspect, copy or reproduce, and any person may obtain a copy or a reproduction of, any public record “except as otherwise provided in this Chapter or as otherwise specifically provided by law.” La. R.S. 44:31. We have stated:

The right of the public to have access to the public records is a fundamental right, and is guaranteed by the 125constitution. La. Const. art. 12, § 3.

The provision of the constitution must be construed liberally in favor of free and unrestricted access to the records, *and that access can be denied only when a law, specifically and unequivocally, provides otherwise.* *Id.* Whenever there is doubt as to whether the public has the right of access to certain records, the doubt must be resolved in favor of the public’s right to see. To allow otherwise would be an improper and arbitrary restriction on the public’s constitutional rights.

Capital City Press v. East Baton Rouge Parish Metropolitan Council, 96–1979, p. 4 (La.7/1/97), 696 So.2d 562, 564 (quoting

Title Research Corp. v. Rausch, 450 So.2d 933, 936 (La.1984)) (emphasis in original).

“Public records” are defined in La. R.S. 44:1(A)(2)(a) as:

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.

Thus, under this broad definition, the investigative file at issue is a public record that any person may obtain a copy of unless the Public Records Act or another law specifically provides otherwise. La. R.S. 44:31.

In this court, the Does, various intervenors, and the AG contend that the Public Records Act contains a specific exemption for the investigative file. La. R.S. 44:3 provides in part:

A. Nothing in this Chapter shall be construed to require 126disclosures of records, or the information contained therein, held by the offices of the attorney general, district attorneys, sheriffs,

police departments, Department of Public Safety and Corrections, marshals, investigators, public health investigators, correctional agencies, communications districts, intelligence agencies, or publicly owned water districts of the state, which records are:

(1) Records pertaining to pending criminal litigation or any criminal litigation which can be reasonably anticipated, until such litigation has been finally adjudicated or otherwise settled. . . .¹³

This court has recognized the provisions of La. R.S. 44:3 as containing a statutory exception to the Public Records Act. *Bester v. Louisiana Supreme Court Cmte. on Bar Admissions*, 00-1360, p. 8 (La.2/21/01), 779 So.2d 715, 719; *Capital City Press*, 96-1979 at p. 5, n. 2, 696 So.2d at 565 n. 2. We have also recognized, however, that this exception is temporary, denying access only until pending or reasonably anticipated criminal litigation has been finally adjudicated or otherwise settled. *Landis v. Moreau*, 00-1157, p. 5 (La.2/21/01), 779 So.2d 691, 695. Nevertheless, it applies to prevent the required public disclosure of investigative records as long as criminal litigation is pending or reasonably anticipated until that litigation has been finally adjudicated or otherwise settled.

13. La. R.S. 44:3(A)(1) refers to an exception provided in subsection (F), which provides:

F. Notwithstanding any other provision of law to the contrary, after a period of ten years has lapsed from the date of death of a person by other than natural causes, and upon approval by the district court having jurisdiction over any criminal prosecution which may result due to the death of such person, any prosecutive, investigative, and other law enforcement agency, or any other governmental agency in possession of investigative files or evidence or potential evidence, or any other record, document, or item relating to said death shall, upon request, provide copies of all such files, records, and documents to immediate family

The parties disagree as to the applicability of La. R.S. 44:3 to the facts of this case. As an initial matter, CNN asserts that only the Does and intervenors, and not the AG, have asserted this exemption and, therefore, it cannot be applied in this case. Part of the difficulty in addressing this issue stems from the fact that the investigating AG who participated in the trial court proceedings is no longer serving in that capacity. The current AG has clearly stated his intention to invoke the exemption, and argues in this court that the exemption is necessary to maintain the integrity of the file and to avoid compromising any future litigation arising from the investigation. The current AG further contends the case remains officially open. In documents filed in the trial court, the former AG requested a determination of what public records were subject to disclosure under the law.

[11] Whether the investigative file is subject to disclosure implicates the provisions of La. R.S. 44:3. That statute plainly provides that disclosure of records pertaining to reasonably anticipated criminal litigation is not required under the Public Records Act until such litigation has been finally adjudicated or otherwise settled. Thus, if the exemption applies, the file is not required to be disclosed at this time

members of the victim and shall provide unlimited access for any and all purposes to all such evidence, potential evidence, and other items to any member of the immediate family and to any person or persons whom any member of the immediate family has designated for such purposes. The access granted shall include but not be limited to the examination, inspection, photographing, copying, testing, making impressions, and the use in any court proceeding of and conducting forensic studies on such evidence, potential evidence, and other items. For the purposes of this Subsection, the term "immediate family" shall mean the surviving spouse, children, grandchildren, and siblings of the victim.

under the law and the AG's question would be resolved. Consequently, we believe the applicability of the exemption was sufficiently invoked by the AG at the time of trial. Additionally, questions pertinent to a determination of the applicability of La. R.S. 44:3 were presented at trial, and the issue was before the trial court.

[12] Turning to the applicability of the exemption provided by La. R.S. 44:3 to the facts of this case, we begin, as we must, with the language of the statute. *Touchard v. Williams*, 617 So.2d 885, 888 (La. 1993) (“[T]he starting point for the interpretation of any statute is the language of the statute itself.”) (internal quotation omitted). The Louisiana Civil Code mandates that when a law is clear and unambiguous and the application of the law does not lead to absurd consequences, the law must be applied as written without any further interpretation of the intent of the legislature. La. C.C. art. 9. Further, the words of a law must be given their generally prevailing meaning. La. C.C. art. 11. The plain language of the statute provides that nothing in the Public Records Act shall require disclosures of records held by the offices of the AG or the DA when the records pertain to pending or reasonably anticipated criminal litigation until the criminal litigation has been finally adjudicated or otherwise settled.

The provisions of the exemption apply to records, or the information contained therein, pertaining to pending or reasonably anticipated criminal litigation. The investigative file to which public access is sought was compiled and produced for the purpose of bringing and proving criminal charges arising from the circumstances surrounding the deaths following Hurricane Katrina at Tenet–Memorial. Everything in the file can be said to pertain to criminal litigation. Thus, if it can be said

that criminal litigation is pending or reasonably anticipated in this case, then the entire file is covered by the exemption and is not required to be disclosed under the Public Records Law at this time.¹⁴

[13] The issue then becomes whether criminal litigation is pending or reasonably anticipated in this case. All parties agree there is no pending criminal litigation related to the deaths following Hurricane Katrina at Tenet–Memorial. Rather, the issue is whether criminal litigation can be reasonably anticipated. The generally understood meaning of the term reasonably anticipated is reasonably foreseen or contemplated. The term reasonably anticipated does not require a certainty or even a near certainty. Thus, criminal litigation can be said to be reasonably anticipated when it is reasonably foreseen or contemplated. The plain language of the statute does not require a finding that criminal litigation will be pursued or will almost certainly be pursued for the exemption to apply. Rather, the exemption applies if it is reasonably foreseen or contemplated, *i.e.*, if it is reasonably anticipated, that criminal litigation will be brought against some potential criminal defendant who was part of the investigation.

This court has previously established that the determination of whether a particular record falls within the exemption provided by La. R.S. 44:3(A)(1) must be made on a case-by-case basis. *Cormier v. In re: Public Records Request of Giulio*, 553 So.2d 806, 807 (La.1989). In making this determination in a specific case, the law “requires more than a judicial acceptance of an assertion of privilege by the prosecutor.” *Cormier*, 553 So.2d at 807; *Conella v. Johnson*, 345 So.2d 498, 501 (La.1977). Rather, a thoughtful determination must be made following a contradictory hearing

14. This is, of course, subject to any exceptions

contained within the statute itself.