

RIGHT TO KNOW ADVISORY COMMITTEE

AGENDA

June 22, 2016

10:00 a.m.

Room 438, State House, Augusta

Convene

1. Welcome and Introductions
2. Summary of the Right To Know Advisory Committee duties and powers
3. Summary of Second Regular Session, 127th Legislature's FOAA actions in 2016
 - A. RTKAC recommendations
 - LD 1586, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings
 - LD 1241, An Act To Increase Government Efficiency
 - B. Proposed public records exceptions reviewed by Judiciary Committee
 - LD 466, An Act To Increase Competition and Ensure a Robust Information and Telecommunications Market
 - LD 1467, An Act Regarding Maine Spirits
 - LD 1498, An Act To Clarify Medicaid Managed Care Ombudsman Services
 - LD 1499, An Act To Increase the Safety of Social Workers
 - LD 1578, An Act To Update Maine's Solid Waste Management Laws
4. Public records exceptions statutory review schedule for public records exceptions enacted from 2005- 2012 pursuant to Public Law 2015, chapter 250 (due by 2017)
5. Potential topics and projects for 2016
 - Judiciary Committee request - review the public records exception enacted in LD 484, which relates to hazardous material transported by railroads. (*See letter.*)
 - Judiciary Committee request - develop comprehensive recommendations for the treatment of personal contact information for professions and occupations regulated by the State (LD 1499) (*See letter.*)
 - Ken Capron request - funding FOAA cases by indigent people and the possibility of developing a court form for a pro se complainant. (*See email.*)
 - Jack Comart (Maine Equal Justice Partners) suggestions – agency time and cost estimates, fee waiver policies, remedies for requestors. (*See email.*)
6. Discussion of any additional topics and projects for 2016
7. Discussion of Subcommittees
8. Scheduling of future meetings

Adjourn

**Right to Know Advisory Committee
Membership List
June 21, 2016**

Appointments by the Governor

Christopher Parr Representing state government interests
Department of Public Safety
104 State House Station
Augusta, ME 04333

Harry R. Pringle Representing school interests
Drummond, Woodsum & MacMahon
84 Marginal Way, Suite 600
Portland, ME 04101-2480

Vacant Representing municipal interests

Eric Stout A member with broad experience in
State of Maine OIT information technology
145 State House Station
Augusta, ME 04333

Appointments by the President of the Senate

Senator David C. Burns Senate member of the Judiciary Committee
159 Dodge Road
Whiting, ME 04691

Richard LaHaye Representing law enforcement interests
Chief, Searsport Police Department
3 Union Street
Searsport, ME 04974

Vacant Representing the press

Luke Rossignol Representing the public
Bemis & Rossingol
1019 State Road
Mapleton, ME 04757

William D. Shorey Representing county or regional interests
Board of Waldo County Commissioners
39-B Spring Street
Belfast, ME 04915

A. J. Higgins Representing broadcasting interests
State House Bureau Chief
Maine Public Broadcasting
18 West Street
Manchester, ME 04351

Summary of Second Regular Session, 127th Legislature's FOAA actions in 2016

RTKAC recommendations

- LD 1586, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings
 - LD 1241, An Act To Increase Government Efficiency
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127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1586

H.P. 1077

House of Representatives, February 9, 2016

**An Act To Implement Recommendations of the Right To Know
Advisory Committee Concerning Remote Participation in Public
Proceedings**

Reported by Representative HOBBS of Saco for the Joint Standing Committee on
Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph
G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint
Rule 218.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

1 Be it enacted by the People of the State of Maine as follows:

2 PART A

3 Sec. A-1. 1 MRSA §403-A is enacted to read:

4 **§403-A. Public proceedings through other means of communication**

5 **1. Requirements.** A body, except a publicly elected body, subject to this subchapter
6 may conduct a public proceeding through telephonic, video, electronic or other similar
7 means of communication only if the following requirements are met:

8 A. The body has adopted a written policy that authorizes a member of the body who
9 is not physically present to participate in a public proceeding. The policy must
10 establish criteria that must be met before a member may participate when not
11 physically present. The policy may not allow a member who is not physically present
12 to participate in an executive session;

13 B. Notice of the public proceeding has been given in accordance with section 406;

14 C. A quorum of the body is assembled physically at the location identified in the
15 notice required by section 406, except that a body may convene a public proceeding
16 by telephonic, video, electronic or other similar means of communication without a
17 quorum if:

18 (1) An emergency has been declared in accordance with Title 22, section 802,
19 subsection 2-A or Title 37-B, section 742;

20 (2) The public proceeding is necessary to take action to address the emergency;
21 and

22 (3) The body otherwise complies with the provisions of this section to the extent
23 practicable based on the circumstances of the emergency;

24 D. Each member of the body who is participating in the public proceeding is able to
25 hear all the other members and speak to all the other members during the public
26 proceeding, and members of the public attending the public proceeding in the
27 location identified in the notice required by section 406 are able to hear all members
28 participating from other locations;

29 E. Each member of the body who is not physically present and who is participating
30 through telephonic, video, electronic or other similar means of communication
31 identifies the persons present at the location from which the member is participating;

32 F. All votes taken during the public proceeding are taken by roll call vote; and

33 G. Each member of the body who is not physically present and who is participating
34 through telephonic, video, electronic or other similar means of communication has
35 received prior to the public proceeding any documents or other materials that will be
36 discussed or presented at the public proceeding, with substantially the same content
37 as those documents actually discussed or presented. Documents or other materials
38 made available at the public proceeding may be transmitted to the member not
39 physically present during the public proceeding if the transmission technology is

1 the board is 4 members, but a smaller number may adjourn until a quorum is present.
2 Emergency meetings may be called by the executive director when it is necessary to take
3 action before a regular meeting can be scheduled. The executive director shall make all
4 reasonable efforts to notify all members as promptly as possible of the time and place of
5 any emergency meeting and the specific purpose or purposes for which the meeting is
6 called. For an emergency meeting, the 4 members constituting a quorum must include at
7 least one board member representing management and at least one board member
8 representing labor.

9 **SUMMARY**

10 Part A of this bill allows members of a body subject to the Freedom of Access Act to
11 participate in meetings of the body through telephonic, video, electronic or other similar
12 means of communication under certain conditions; however, the bill does not allow
13 members of publicly elected bodies to participate in public proceedings unless physically
14 present. The body must have adopted a written policy authorizing remote participation
15 with criteria that must be met before a member may participate remotely, but the policy
16 may not allow a member to participate remotely in an executive session of the body. The
17 bill also requires that notice of the proceeding must be given as if no members were
18 participating remotely, each member of the body must be able to hear and speak to all
19 other members, members of the public must be able to hear all members of the body, each
20 member participating remotely must identify anyone else present at the location from
21 which the member is participating, documents or materials discussed or presented at the
22 proceeding must have been received by or transmitted to members participating remotely
23 and all votes must be taken by roll call vote. A member who is not physically present may
24 not vote in a quasi-judicial proceeding of the body. A quorum of the body must be
25 physically present unless an emergency has been declared and the proceeding is
26 necessary to address the emergency. If the body conducts proceedings with members
27 participating remotely, the body must also hold at least one proceeding annually where no
28 members participate remotely.

29 Under current law, the following state agencies are authorized to use remote-access
30 technology to conduct meetings: the Finance Authority of Maine, the Commission on
31 Governmental Ethics and Election Practices, the Emergency Medical Services' Board and
32 the Workers' Compensation Board. Part B provides a specific exemption from the new
33 requirements for the Emergency Medical Services' Board and the Workers' Compensation
34 Board and does not affect the existing authority of those agencies or the Finance
35 Authority of Maine or the Commission on Governmental Ethics and Election Practices to
36 use remote-access technology to conduct meetings.

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Date: (Filing No. H-)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1077, L.D. 1586, Bill, “An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings”

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 1 MRSA §403-A is enacted to read:

§403-A. Remote participation in public proceedings

1. Written policy required; posted. A body subject to this subchapter may conduct a public proceeding in which one or more members participate remotely through telephonic, video, electronic or other similar means of communication only if the body first adopts a written policy that governs remote participation and that explicitly describes how the policy meets the principles of this subchapter. The body shall make the policy available on its publicly accessible website, if any, and shall post a copy of the policy at the site of the proceeding included in the notice under section 406 in which one or more members participate remotely.

2. Policy contents. The policy adopted under subsection 1 must address under what circumstances a member may participate remotely, whether a quorum is required to physically assemble, whether the body may conduct an executive session when a member is participating remotely, the regular, quasi-judicial or other proceedings in which a member participating remotely may vote and how the body will ensure that members of the public in attendance at the site of the proceeding included in the notice under section 406 can hear or see and hear the members who are participating remotely.

3. Policy provided to Public Access Ombudsman; review. A body shall submit a copy of the policy adopted under subsection 1 to the Public Access Ombudsman, appointed pursuant to Title 5, section 200-I, subsection 1, who shall make all the policies received available to the public and submit them annually to the advisory committee.'

COMMITTEE AMENDMENT

SUMMARY

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This amendment is the minority report of the Joint Standing Committee on Judiciary.

This amendment replaces the bill, which restricts which public bodies may conduct public proceedings when one or more members are participating remotely through telephonic, video, electronic or other similar means of communication. Instead, this amendment provides that any body subject to the Freedom of Access Act may conduct a public proceeding in which one or more members participate remotely through telephonic, video, electronic or other similar means of communication, but only if the body first adopts a written policy that governs the remote participation and that explicitly describes how the policy meets the principles of the Freedom of Access Act. The policy must address under what circumstances a member may participate remotely, whether the body may conduct an executive session when a member is participating remotely, whether a quorum must physically assemble, the proceedings in which a member participating remotely may vote and how the body will ensure that members of the public in attendance at the site of the proceeding included in the notice can hear or see and hear the members who are participating remotely.

A body that adopts a remote participation policy must make the policy available on the body's publicly accessible website and must post a copy at the location of each meeting during which one or more members participate remotely.

A body that adopts a remote participation policy must send a copy of the policy to the Public Access Ombudsman, who will make all the policies received available to the public and submit them annually to the Right To Know Advisory Committee.

FISCAL NOTE REQUIRED
(See attached)

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

S.P. 446 - L.D. 1241

An Act To Increase Government Efficiency

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 4 MRSA §1602, sub-§3, as amended by PL 1997, c. 523, §2, is further amended to read:

3. Officers; quorum. The authority shall elect from its membership a chair and a vice-chair. In addition, the authority may have a secretary and a treasurer, who may be members or nonmembers of the authority. Three members of the authority constitute a quorum and the vote of 3 members is necessary for any action taken by the authority. A vacancy in the membership of the authority does not impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

The authority may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

A. Each member can hear all other members, speak to all other members and, to the extent reasonably practicable, see all other members by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all members participating from other locations by videoconferencing or other similar means of communication;

B. Each member who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the member is participating;

C. A member who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the member's attendance is not reasonably practical. The reason that the member's attendance is not reasonably practical must be stated in the minutes of the meeting; and

D. Each member who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate an action taken by the authority at the public proceeding.

Sec. 2. 22 MRSA §2054, sub-§4, as enacted by PL 1971, c. 303, §1, is amended to read:

4. Powers of authority. The powers of the authority ~~shall be~~ are vested in ~~the its~~ members ~~thereof in office from time to time,~~ and 5 members of the authority ~~shall~~ constitute a quorum at any meeting of the authority. ~~No~~ A vacancy in the membership of the authority ~~shall does not~~ impair the right of such members a quorum to exercise all the rights and perform all the duties of the authority. ~~Any~~ An action taken by the authority under this chapter may be authorized by resolution approved by a majority of the members present at any regular or special meeting, which resolution ~~shall take~~ takes effect immediately, or an action taken by the authority may be authorized by a resolution circularized or sent to each member of the authority, which ~~shall take~~ resolution takes effect at such time as a majority of the members ~~shall~~ have signed an assent to such resolution. Resolutions of the authority need not be published or posted. The authority may delegate by resolution to one or more of its members or its executive director such powers and duties as it ~~may deem~~ considers proper.

The authority may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

A. Each member can hear all other members, speak to all other members and, to the extent reasonably practicable, see all other members by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all members participating from other locations by videoconferencing or other similar means of communication;

B. Each member who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the member is participating;

C. A member who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the member's attendance is not reasonably practical. The reason that the member's attendance is not reasonably practical must be stated in the minutes of the meeting; and

D. Each member who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate an action taken by the authority at the public proceeding.

Sec. 3. 30-A MRSA §4723, sub-§2, ¶B, as amended by PL 2011, c. 560, §1, is further amended to read:

B. The Maine State Housing Authority, as authorized by Title 5, chapter 379, must have 10 commissioners, 8 of whom must be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over economic development and to confirmation by the Legislature. The 9th commissioner is the Treasurer of State who serves as an ex officio voting member. The Treasurer of State may designate the Deputy Treasurer of State to serve in place of the Treasurer of State. The 10th commissioner is the director of the Maine State Housing Authority who serves as an ex officio nonvoting member. At least 3 gubernatorial appointments must include a representative of bankers, a representative of elderly people and a resident of housing that is subsidized or assisted by programs of the United States Department of Housing and Urban Development or of the Maine State Housing Authority. In appointing the resident, the Governor shall give priority consideration to nominations that may be made by tenant associations established in the State. Of the 5 remaining gubernatorial appointments, the Governor shall give priority to a representative involved in the housing business and a representative of people with disabilities. The powers of the Maine State Housing Authority are vested in the commissioners. The commissioners may delegate such powers and duties to the director of the Maine State Housing Authority as they determine appropriate.

The Governor shall appoint the chair of the commissioners from among the 8 gubernatorial appointments. The chair serves as a nonvoting member, except that the chair may vote only when the chair's vote will affect the result. The commissioners shall elect a vice-chair of the commissioners from among their number.

Following reasonable notice to each commissioner, 5 commissioners of the Maine State Housing Authority constitute a quorum for the purpose of conducting its business, exercising its powers and for all other purposes, notwithstanding the existence of any vacancies. Action may be taken by the commissioners upon a vote of a majority of the commissioners present, unless otherwise specified in law or required by its bylaws.

The Maine State Housing Authority may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

(1) Each commissioner can hear all other commissioners, speak to all other commissioners and, to the extent reasonably practicable, see all other commissioners by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all commissioners participating from other locations by videoconferencing or other similar means of communication;

(2) Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the commissioner is participating;

(3) A commissioner who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the commissioner's attendance is not reasonably practical. The reason that the commissioner's attendance is not reasonably practical must be stated in the minutes of the meeting; and

(4) Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the commissioner not physically present during the public proceeding if the transmission technology is available. Failure to comply with this subparagraph does not invalidate an action taken by the Maine State Housing Authority at the public proceeding.

Sec. 4. 30-A MRS §5951, sub-§4, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

4. Officers of board; exercise of powers. The board of commissioners shall elect one of its members as ~~chairman~~, chair and one as ~~vice-chairman~~ vice-chair and shall appoint an executive director who ~~shall~~ also ~~serve~~ serves as both secretary and treasurer. The powers of the bank are vested in the commissioners of the bank in office from time to time. Three commissioners of the bank ~~constitutes~~ constitute a quorum at any meeting of the commissioners. Action may be taken and motions and resolutions adopted by the bank at any meeting by the affirmative vote of at least 3 commissioners of the bank. A vacancy in the office of commissioner of the bank does not impair the right of a quorum of the commissioners to exercise all the powers and perform all the duties of the bank.

The board of commissioners may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

A. Each commissioner can hear all other commissioners, speak to all other commissioners and, to the extent reasonably practicable, see all other commissioners

by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all commissioners participating from other locations by videoconferencing or other similar means of communication;

B. Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the commissioner is participating;

C. A commissioner who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the commissioner's attendance is not reasonably practical. The reason that the commissioner's attendance is not reasonably practical must be stated in the minutes of the meeting; and

D. Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the commissioner not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate an action taken by the bank at the public proceeding.

Summary of Second Regular Session, 127th Legislature's FOAA actions in 2016

Proposed public records exceptions reviewed by Judiciary Committee

- LD 466, An Act To Increase Competition and Ensure a Robust Information and Telecommunications Market
- LD 1467, An Act Regarding Maine Spirits
- LD 1498, An Act To Clarify Medicaid Managed Care Ombudsman Services
- LD 1499, An Act To Increase the Safety of Social Workers
- LD 1578, An Act To Update Maine's Solid Waste Management Laws

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
H.P. 305 - L.D. 466

**An Act To Increase Competition and Ensure a Robust Information and
Telecommunications Market**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA §7102, sub-§6-A is enacted to read:

6-A. Price cap incumbent local exchange carrier or price cap ILEC. "Price cap incumbent local exchange carrier" or "price cap ILEC" means an incumbent local exchange carrier that agreed to accept Connect America Fund Phase II support pursuant to the Federal Communications Commission's Report and Order released on December 18, 2014, in In the Matter of Connect America Fund, WC Docket No. 10-90, FCC 14-190, for locations within the State on or before January 1, 2016 and does not receive funding from a state universal service fund under section 7104.

Sec. 2. 35-A MRSA §7104, sub-§2, as amended by PL 2011, c. 623, Pt. B, §13, is further amended to read:

2. General availability. The commission shall seek to ensure that provider of last resort service is available at reasonably comparable rates to consumers throughout all areas of the State ~~at reasonably comparable rates in which the service is available pursuant to section 7221.~~

Sec. 3. 35-A MRSA §7221, sub-§§4 to 7 are enacted to read:

4. Removal of the provider of last resort service obligation in select municipalities. This subsection governs the removal of the obligation of a price cap ILEC to provide provider of last resort service in certain municipalities.

A. Thirty days after the effective date of this subsection a price cap ILEC is not obligated to provide provider of last resort service in the following municipalities:

- (1) Portland;
- (2) Lewiston;

- (3) Bangor;
- (4) South Portland;
- (5) Auburn;
- (6) Biddeford; and
- (7) Sanford.

B. Every 6 months after the effective date of this subsection, the commission shall examine the service quality reports of a price cap ILEC under section 7225-A for the immediately preceding 2 consecutive quarters and, if the service quality requirements of section 7225-A have been met, the commission shall issue a certificate relieving the price cap ILEC of the obligation to provide provider of last resort service in 5 of the municipalities listed in this paragraph. The order in which a price cap ILEC may be relieved of the obligation to provide provider of last resort service in a municipality under this paragraph is as follows:

- (1) Scarborough;
- (2) Gorham;
- (3) Waterville;
- (4) Kennebunk;
- (5) Cape Elizabeth;
- (6) Old Orchard Beach;
- (7) Yarmouth;
- (8) Bath;
- (9) Westbrook;
- (10) Freeport;
- (11) Brewer;
- (12) Kittery;
- (13) Windham;
- (14) Brunswick; and
- (15) Augusta.

C. For one year from the date a price cap ILEC is relieved of the obligation to provide provider of last resort service in a municipality in accordance with this subsection, the price cap ILEC shall continue to offer to each provider of last resort service customer in that municipality to whom it was providing the service on the date the obligation ceased a telephone service with the same rates, terms and conditions as it provides to provider of last resort service customers to whom it is obligated to provide provider of last resort service.

D. Prior to the removal of the obligation to provide provider of last resort service in any municipality pursuant to this subsection, the commission shall hold a public

meeting in the municipality to allow customers of the price cap ILEC to obtain information about the upcoming changes to service.

E. The price cap ILEC shall give advance notice in its monthly billing statement to each customer in a municipality listed in this subsection in which the obligation to provide provider of last resort service will be removed. That notice must include the following information:

(1) An existing customer will still be provided service for one year from the date on which the obligation to provide provider of last resort service is removed at the same rates, terms and conditions as the price cap ILEC provides to provider of last resort service customers to whom the price cap ILEC is obligated to provide provider of last resort service; and

(2) The date, time and location of the public meeting required under paragraph D, which will be hosted by the commission in the municipality.

5. Relief of provider of last resort service obligation. After a price cap ILEC has been relieved of the obligation to provide provider of last resort service in all the municipalities listed in subsection 4, the price cap ILEC may petition the commission under this subsection to be relieved of its provider of last resort service obligation in one or more additional municipalities.

A. The commission shall approve the petition if the commission finds:

(1) With respect to a municipality, that, pursuant to the following standards, there is sufficient competition in that municipality to ensure access to affordable telephone service by households in the municipality:

(a) In addition to the price cap ILEC, there is at least one wireline-facilities-based voice network service provider that offers service to at least 95% of the households in the municipality; and

(b) One or more mobile telecommunications services providers offer, on a combined basis, mobile telecommunications services to at least 97% of the households in the municipality; and

(2) The price cap ILEC prior to filing the petition has met service quality requirements under section 7225-A in the immediately preceding 2 consecutive quarters.

B. The commission shall establish by rule the sources of information and a methodology it will use to reasonably calculate the percentage of households served by wireline-facilities-based voice network service providers and mobile telecommunications services providers for purposes of making a determination under paragraph A. The commission may not require wireline-facilities-based voice network service providers and mobile telecommunications services providers to provide competitive information to the commission but may rely on other available sources for this information, including information available from the Federal Communications Commission. Competitive information about the extent of service provided by wireline-facilities-based voice network service providers and mobile telecommunications services providers used to make this determination is confidential and is not a public record under Title 1, section 402, subsection 3 and



may not be disclosed to any person outside the commission. In developing the methodology under this paragraph, the commission may allow for reasonable adjustments to the information it receives if it is aware that actual availability of competitive services differs from what is reflected in the information. If the application of the commission's methodology results in a finding that the standards in paragraph A, subparagraph (1) have been met, there is a rebuttable presumption of sufficient competition in a municipality to ensure access to affordable telephone service by households in the municipality.

C. Ninety days prior to filing a petition under this subsection, a price cap ILEC shall notify the commission and the Office of the Public Advocate of the price cap ILEC's intent to file a petition. The price cap ILEC shall also give advance notice of its intent to file a petition in its monthly billing statement to each customer in the municipality in which it will be seeking relief from the obligation to provide provider of last resort service.

The commission shall hold a public hearing in each affected municipality to allow customers of the price cap ILEC as well as other residents of the affected municipality to testify. The price cap ILEC shall give advance notice of the hearing to each customer in the municipality in its monthly billing statement and publish this notice in a newspaper of general circulation in that municipality.

D. The commission shall issue an order granting or denying a petition within 180 days of receiving a petition under this subsection, except that the commission, at its discretion, may extend this period for up to an additional 30 days.

E. For one year from the date the commission issues an order granting a price cap ILEC relief from the obligation to provide provider of last resort service in a municipality, the price cap ILEC shall continue to offer to each provider of last resort service customer in that municipality to whom it was providing the service on the date of that order a telephone service with the same rates, terms and conditions as it provides to provider of last resort service customers to whom it is obligated to provide provider of last resort service.

For purposes of this subsection, "voice network service provider" has the same meaning as in section 7104.

6. Abandonment. A price cap ILEC may not discontinue, reduce or impair the service that it provides in a municipality, or part of a municipality, where it has previously served as the provider of provider of last resort service unless the commission approves the discontinuance, reduction or impairment. The commission may approve the discontinuance, reduction or impairment only if it finds that neither the present nor future public convenience and necessity will be adversely affected by such discontinuance, reduction or impairment of service.

In granting its approval under this subsection, the commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest. A price cap ILEC abandoning all or part of its plant, property or system or discontinuing service pursuant to authority granted by the commission under this subsection is deemed to have waived all objections to the terms, conditions or requirements imposed by the

commission in its approval. A discontinuance approved under this subsection is not subject to further approval under section 1104.

7. Rules. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 4. 35-A MRSA §7222-A is enacted to read:

§7222-A. Rates

1. Price cap ILEC rate requirements. The provisions of sections 304 and 307 do not apply to a price cap ILEC with respect to the rates for provider of last resort service. A price cap ILEC shall post on its publicly accessible website the rates, terms and conditions for provider of last resort service. Rates for provider of last resort service provided by the price cap ILEC are governed by the following:

A. On the effective date of this paragraph, the monthly charge for provider of last resort service offered by a price cap ILEC may not exceed \$20 for any residential customer. A price cap ILEC may, beginning one year after the effective date of this paragraph, increase rates for its provider of last resort service by up to 5% annually; and

B. Low-income customers of a price cap ILEC must receive a monthly discount of \$3.50 in addition to any applicable federal subsidy for voice service for low-income customers.

For the purposes of this subsection, "low-income customer" means a customer who qualifies for assistance under the Federal Communications Commission's Lifeline program, as defined in 47 Code of Federal Regulations, Section 54.401.

Sec. 5. 35-A MRSA §7225-A is enacted to read:

§7225-A. Price cap ILEC service quality requirements

1. Service quality metrics reporting. A price cap ILEC shall report to the commission quarterly on service quality using the following metrics, using rolling one-year averages, in areas where provider of last resort service is available:

A. Network trouble rates;

B. The percentage of network troubles not cleared in 48 hours;

C. The percentage of installation appointments not met; and

D. The average delay, in days, for missed installation appointments.

A report submitted under this subsection is confidential and not a public record under Title 1, section 402, subsection 3 and may not be disclosed to any person outside the commission, except as provided in subsection 3.

2. Minimum requirements. A price cap ILEC shall provide service that meets the following minimum requirements, based on rolling one-year averages, in the areas in which it serves as provider of provider of last resort service:





- A. Less than 3 network troubles per 100 customers;
- B. Less than 20% of network troubles not cleared within 48 hours;
- C. Less than 12% of all installation appointments not met; and
- D. Less than a 9-day average delay for missed installation appointments.

3. Failure to meet service quality requirements. If a price cap ILEC fails to meet any service quality requirement in this section for any 2 consecutive quarters, the results for these service quality requirements for these quarters are no longer confidential and become public records. The commission shall investigate a failure to meet a service quality requirement. If the commission concludes after investigation that the failure to meet a service quality requirement is due to factors within the control of the price cap ILEC, the commission shall, by order, direct the price cap ILEC to take such steps as the commission determines necessary to meet the requirement. If the provider fails to comply with the commission's order, the commission shall impose a penalty in accordance with section 1508-A, subsection 1, paragraph A in an amount sufficient to ensure compliance with that order. Nothing in this subsection limits the commission's authority to direct a price cap ILEC to act to improve service under any other provision of this chapter.

Sec. 6. Rules. The Public Utilities Commission shall provisionally adopt major substantive rules, as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, to implement Title 35-A, section 7221, subsections 4 to 6 by January 1, 2017. By January 1, 2017, the commission shall also review its rules adopted pursuant to Title 35-A, section 7225 and make any necessary amendments to account for changes as a result of the enactment of Title 35-A, section 7225-A. Notwithstanding Title 35-A, section 7225, subsection 3, rules adopted pursuant to the commission's review under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 7. Commission review of effect of relief of provider of last resort service obligation. By January 15, 2018 and again by January 15, 2020, the Public Utilities Commission shall submit to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters a report related to the removal of the provider of last resort service obligation for a price cap ILEC under the Maine Revised Statutes, Title 35-A, section 7221, subsections 4 and 5. A report under this section must list municipalities in which the obligation to provide provider of last resort service has ceased pursuant to Title 35-A, section 7221, subsection 4, paragraph B or in which the commission has approved in accordance with Title 35-A, section 7221, subsection 5 the removal of a price cap ILEC's obligation to provide provider of last resort service. A report under this section must also include the effect of the removal on former provider of last resort service customers, the price cap ILEC's workforce, the maintenance and status of the copper line network, public safety and the cost, features and availability of telephone service, including service to the hearing impaired, and broadband service. Each report may include recommendations for related legislation. The joint standing committee of the Legislature having jurisdiction over utilities and energy matters may report out a bill relating to provider of last resort service to the Second Regular Session of the 128th Legislature and may also report out a bill relating to provider of last resort service to the Second Regular Session of the 129th Legislature. At least 30 days before submitting a report to the committee, the commission shall post the report on its publicly

accessible website and allow persons to submit to the commission written comments on the report. The commission shall submit to the committee with each report all comments that it received on the respective report. If the commission in either report makes a recommendation to repeal or modify Title 35-A, section 7221, subsection 5, it may not, notwithstanding that subsection, accept a petition submitted in accordance with that subsection until 90 days after the adjournment of the session to which the report is submitted.

Sec. 8. Commission legal review; report. The Public Utilities Commission shall examine all laws and rules of this State relating to provider of last resort service as they apply to a price cap ILEC, as defined in the Maine Revised Statutes, Title 35-A, section 7102, subsection 6-A, and determine whether any changes may be needed to conform those laws and rules to the provisions of this Act. The commission shall submit a report of its findings, together with any necessary draft legislation to implement its recommendations, to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters by December 15, 2016. The committee may report out a bill relating to provider of last resort service to the First Regular Session of the 128th Legislature.

Sec. 9. Commission's annual report. Through 2022, the Public Utilities Commission shall include in its annual report pursuant to the Maine Revised Statutes, Title 35-A, section 120, subsection 7 information on provider of last resort service, including in which municipalities the obligation to provide provider of last resort service has ceased pursuant to Title 35-A, section 7221, subsection 4, paragraph B; the municipalities in which the commission granted approval of a petition in accordance with Title 35-A, section 7221, subsection 5; the municipalities, if any, in which the commission approved the discontinuance, reduction or impairment of service under Title 35-A, section 7221, subsection 6; and any complaints the commission may have received regarding the costs of or a lack of access to reliable basic telephone service in municipalities from which the provider of last resort service obligation has been removed.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
S.P. 565 - L.D. 1467

An Act Regarding Maine Spirits

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, legislative action is immediately necessary to ensure continued and efficient administration of the state liquor contract; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 28-A MRSA §84, sub-§4, as amended by PL 2013, c. 368, Pt. V, §61, is further amended to read:

4. Confer with commissioner. Confer regularly as necessary or desirable and not less than once a month with the Commissioner of Administrative and Financial Services on the operation and administration of the bureau and make available for inspection by the Commissioner of Administrative and Financial Services, upon request, all books, records, files and other information and documents of the bureau; ~~and~~

Sec. 2. 28-A MRSA §84, sub-§5, as amended by PL 2013, c. 588, Pt. B, §1, is further amended to read:

5. Certification. Certify monthly to the Treasurer of State and the Commissioner of Administrative and Financial Services a complete statement of revenues and expenses for liquor sales for the preceding month and submit an annual report that includes a complete statement of the revenues and expenses for the bureau to the Governor and the Legislature, together with recommendations for changes in this Title-; ~~and~~

Sec. 3. 28-A MRSA §84, sub-§6 is enacted to read:

6. Implement a spirits sales data reporting system. Collect from reselling agents data on spirits sales made by each reselling agent to establishments licensed to sell spirits for on-premises consumption. The data must include, but is not limited to, the amount and date of sale of each product code sold to on-premises licensees by the reselling agent. For the purposes of this subsection, "product code" has the same meaning as in section 461. For the purposes of collecting on-premises spirits sales data from reselling agents, the director shall enter into a contract with a trade association representing states that control and manage the sale of spirits. The contract must require that neither the bureau nor the trade association may make publicly available any information that would specifically identify the reselling agent, including, but not limited to, the reseller's name, the name of the reseller's agency liquor store, the reseller's agency liquor store's address or the address of any associated storage facility of the reselling agent.

Sec. 4. 28-A MRSA §453-C, sub-§4 is enacted to read:

4. Reporting of spirits sales to on-premises licensees. Beginning October 15, 2016, a licensed reselling agent shall report on a monthly basis all spirits sales made to establishments licensed to sell spirits for on-premises consumption.

A. A report under this subsection must be made to a trade association contracted by the bureau to collect spirits sales data from reselling agents as described in section 84, subsection 6.

B. The bureau shall ensure that reports under this subsection may be made by electronic transmission through a secure website established by the bureau. A reselling agent that is not reasonably able to use the website may submit a report under this subsection on paper or by using other methods approved by the bureau.

C. The bureau may provide a stipend or reimbursement to reselling agents licensed and actively selling spirits to on-premises licensees as of July 1, 2016 to mitigate the costs of compliance with this subsection.

D. The bureau may adopt rules regarding mitigating the costs incurred by reselling agents in complying with this subsection. Rules adopted pursuant to this paragraph are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

Sec. 5. 28-A MRSA §606, sub-§2, as amended by PL 2011, c. 380, Pt. PPPP, §1 and PL 2013, c. 368, Pt. V, §61, is repealed.

Sec. 6. 28-A MRSA §755, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

§755. Records confidential

All Except for on-premises spirits sales data required to be reported by reselling agents in accordance with section 453-C, subsection 4, all business and financial records of licensees are confidential.

Sec. 7. Bureau to adopt rules. No later than October 1, 2016, the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations shall adopt rules to mitigate the costs incurred by reselling agents in



complying with the reporting requirements of the Maine Revised Statutes, Title 28-A, section 453-C, subsection 4.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
H.P. 1021 - L.D. 1498

An Act To Clarify Medicaid Ombudsman Services

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §3174-X, as enacted by PL 1999, c. 681, §1, is repealed and the following enacted in its place:

§3174-X. Contracted ombudsman services

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Children's health insurance program" means the state children's health insurance program under Title XXI of the Social Security Act. "Children's health insurance program" includes the Cub Care program, which is established in section 3174-T, the federal Children's Health Insurance Program, or CHIP, and the federal State Children's Health Insurance Program, or S-CHIP.

B. "Eligible member" means a person who is eligible to participate as a member or beneficiary of the MaineCare program or the children's health insurance program.

C. "Ombudsman" means the director of the program and persons employed or volunteering to perform the work of the program.

D. "Outreach and education" includes, but is not limited to, work site and community-based training and workshops for members, eligible members and health care providers, social service providers and health insurance navigators, brokers and agents; outreach at events such as town fairs, expositions and health fairs; development of mailings about coverage options, open enrollment periods and other important updates; information hotline response, including providing information and referrals to members and eligible members who call; and screening for eligibility for coverage programs, including programs other than Medicaid programs such as, but not limited to, prescription assistance programs.

E. "Program" means the ombudsman program established under this section.

2. Program established. The ombudsman program is established as an independent program to provide ombudsman services to the Medicaid population regarding Medicaid services provided by the department and the department's office for family independence and office of MaineCare services. The program shall consider and promote the best interests of the Medicaid and children's health insurance program populations, answer inquiries and investigate, advise and work toward resolution of complaints of infringement of the rights of a member or eligible member. The program shall include outreach and education to eligible members and those who serve eligible members, including health care providers, social service providers and health insurance navigators, brokers, agents and other enrollment professionals. The program shall function through the staff of the program, subcontractors and any volunteers recruited and trained to assist in the duties of the program. If members or eligible members described in this subsection are applying for or receiving long-term care home-based and community-based services or institutional services, ombudsman assistance for those services is provided by the long-term care ombudsman program established pursuant to section 5106, subsection 11-C. The program shall coordinate with the long-term care ombudsman program on activities, including but not limited to marketing, outreach and referral services.

3. Contracted services; political activity prohibited. The program shall operate by contract with a nonprofit organization that is best able to provide services on a statewide basis. The ombudsman may not be actively involved in state-level political party activities or publicly endorse, solicit funds for or make contributions to political parties on the state level or candidates for statewide elective office. The ombudsman may not be a candidate for or hold any statewide elective or appointive public office.

4. Program services. The first priority in the work of the program and the contract for ombudsman services under subsection 3 must be case-specific advocacy and enrollment services. In performing services under this section, the program, as it determines to be appropriate, may create and maintain records and case-specific reports. The program may:

- A. Provide information to the public about the services of the program through a comprehensive outreach program. The program shall provide information through a toll-free telephone number or numbers;
- B. Answer inquiries, investigate and work toward resolution of complaints regarding the performance and services of the department and participate in conferences, meetings and studies that may improve the performance of the department;
- C. Provide services to members and eligible members to assist them in protecting their rights;
- D. Inform members and eligible members of the means of obtaining services from the department;
- E. Provide information and referral services;
- F. Analyze and provide opinions and recommendations to agencies, the Governor and the Legislature on state programs, rules, policies and laws;

G. Determine what types of complaints and inquiries will be accepted for action by the program and adopt policies and procedures regarding communication with members and eligible members making inquiries or complaints and the department;

H. Apply for and use grants, gifts and funds for the purpose of performing the duties of the program; and

I. Collect and analyze records and data relevant to the duties and activities of the program and make reports as required by law or as the department considers appropriate.

5. Information for members and eligible members; eligibility. The program, in consultation with appropriate interested parties, shall provide information about eligibility requirements and procedures for enrolling in MaineCare to members and eligible members, including their dependents. The providing of the information under this subsection does not constitute representation of members and eligible members. Members and eligible members may seek and receive information regardless of whether they are represented by legal counsel. The information must be provided free of charge to members and eligible members.

This subsection does not create new rights or obligations concerning the provision of legal advice or representation of members and eligible members.



6. Confidentiality of records. Information held by or records or case-specific reports maintained by the program are confidential. Disclosure may be made only if the ombudsman determines such disclosure is lawful and in the best interest of the member or eligible member.

7. Liability. Any person who in good faith submits a complaint or inquiry to the program pursuant to this section is immune from any civil or criminal liability arising from that complaint or inquiry. For the purpose of any civil or criminal proceedings, there is a rebuttable presumption that any person acting pursuant to this section did so in good faith. The ombudsman and employees and volunteers of the program are employees of the State for the purposes of the Maine Tort Claims Act.

8. Information. Information about the services of the program must be given to all members and eligible members who receive or are eligible to receive services from the department and from persons and entities contracting with the department for the provision of Medicaid services.

9. Report. The program shall report to the department according to the requirements of the program contract under subsection 3. The program shall also report annually by January 1st to the joint standing committee of the Legislature having jurisdiction over health and human services matters on the activities and services of the program, priorities that may have been set by the program among types of inquiries and complaints, waiting lists for services and the provision of outreach services and recommendations for changes in statute, rules or policy to improve the provision of services.

10. Funding. The department shall contract for ombudsman services under this section as long as nonstate funding is available.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
H.P. 1022 - L.D. 1499

An Act To Increase the Safety of Social Workers

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA §7032 is enacted to read:

§7032. Addresses confidential

The address and telephone number of an applicant for licensure or a person licensed under this chapter that are in the possession of the board are confidential. Nothing in this section prohibits the board and its staff from using and disclosing the address and telephone number of an applicant or licensee as necessary to perform the duties and functions of the board.

Date: (Filing No. S-)

ENVIRONMENT AND NATURAL RESOURCES

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE
SENATE
127TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT " " to S.P. 626, L.D. 1578, Bill, "An Act To Update Maine's Solid Waste Management Laws"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 38 MRSa §1611 is enacted to read:

§1611. Stewardship program for batteries

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Approved product" means:

(1) A covered battery or a covered battery-containing product for which its producer, individually or through a covered battery stewardship organization, has submitted a covered battery stewardship plan approved by the commissioner and the plan has been implemented to collect and recycle covered batteries in accordance with the plan; or

(2) A covered battery-containing product that has been listed in accordance with subsection 9 as the product of a participant in a covered battery stewardship program.

B. "Brand" means a trademark, including both a registered and an unregistered trademark, a logo, a name, a symbol, a word, an identifier or a traceable mark that identifies a covered battery or covered battery-containing product and identifies as the producer of the battery or product the owner or licensee of the brand.

C. "Covered battery" means a new or unused primary battery or a new or unused rechargeable battery.

D. "Covered battery-containing product" means a new or unused product that contains or is packaged with a primary battery or a rechargeable battery. "Covered battery-containing product" does not include:

COMMITTEE AMENDMENT

1 (1) A product from which the primary battery or rechargeable battery is not
2 easily removed or is not intended or designed to be removed from the product by
3 a consumer;

4 (2) A medical device, as described in the Federal Food, Drug and Cosmetic Act,
5 21 United States Code, Section 321(h) (2009), if, when the device or battery
6 within the device is discarded, it must be treated as biomedical waste or if
7 changing the supplier of the battery contained in the medical device would trigger
8 the need for premarket review of the device with the United States Food and
9 Drug Administration pursuant to the Federal Food, Drug and Cosmetic Act, 21
10 United States Code, Section 360 (2012), unless such device is listed as an exempt
11 device under the Federal Food, Drug and Cosmetic Act, 21 United States Code,
12 Section 360(m) (2012) or other applicable provision of law; or

13 (3) A device related to the physical or ancillary operation or use of a motor
14 vehicle that is distributed through a new vehicle dealer franchised by the original
15 manufacturer of the motor vehicle. As used in this subparagraph, "motor
16 vehicle" has the same meaning as in Title 29-A, section 101, subsection 42 and
17 "new vehicle dealer" has the same meaning as in Title 29-A, section 851,
18 subsection 9.

19 E. "Covered battery stewardship organization" or "organization" means an
20 organization appointed by more than one producer to design, submit a plan for,
21 implement and administer a covered battery stewardship program in accordance with
22 this section and that has accepted that appointment.

23 F. "Covered battery stewardship plan" or "plan" means a plan submitted to the
24 commissioner in accordance with subsection 3 by a producer or a covered battery
25 stewardship organization.

26 G. "Covered battery stewardship program" or "program" means a system
27 implemented for the collection, transportation, recycling and disposal of covered
28 batteries in accordance with a covered battery stewardship plan approved under
29 subsection 4.

30 H. "Discarded covered battery" means a covered battery that a user discarded,
31 abandoned or sent for recycling.

32 I. "Operator" means a producer or covered battery stewardship organization that
33 implements and administers a covered battery stewardship program.

34 J. "Participant" means a producer that establishes or participates in a covered battery
35 stewardship program individually or by appointing and having that appointment
36 accepted by a covered battery stewardship organization to operate the program on the
37 producer's behalf.

38 K. "Primary battery" means a nonrechargeable battery that weighs 2 kilograms or
39 less, including, but not limited to, nonrechargeable alkaline, carbon-zinc and lithium
40 metal batteries.

41 L. "Producer" means, with respect to a covered battery or covered battery-containing
42 product that is sold, offered for sale or distributed for sale in the State, the following:



1 **14. Proprietary information.** Proprietary information submitted to the department
2 in a covered battery stewardship plan, in an amendment to a plan or pursuant to the
3 reporting requirements of this section that is identified by the submitter as proprietary
4 information is confidential and must be handled by the department in the same manner as
5 confidential information is handled under section 1310-B.

6 As used in this subsection, "proprietary information" means information that is a trade
7 secret or production, commercial or financial information the disclosure of which would
8 impair the competitive position of the submitter and would make available information
9 not otherwise publicly available.

10 **15. Administration and enforcement; rules.** The department shall administer and
11 enforce this section and may adopt rules consistent with this section as necessary for the
12 purposes of implementing, administering and enforcing this section. Rules adopted
13 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
14 subchapter 2-A.

15 A. The department shall charge a reasonable fee to be paid by an applicant for
16 review and approval of a covered battery stewardship plan. A fee assessed under this
17 paragraph must be based on the actual costs to the department of reviewing and
18 approving a covered battery stewardship plan and may not exceed \$25,000.

19 B. The department may establish a reasonable annual fee, to be paid by the operator
20 of each covered battery stewardship program, to cover the department's costs for
21 annual report review, oversight, administration and enforcement of the program. A
22 fee assessed under this paragraph must be based on the actual costs to the department
23 of annual report review, oversight, administration and enforcement of the operator's
24 program and may not exceed \$25,000 per year.

25 C. The commissioner may not initiate an enforcement action under this section
26 against a manufacturer, distributor, wholesaler or retailer:

27 (1) Concerning the sale of covered batteries that are not approved products if the
28 sale occurred prior to October 1, 2018;

29 (2) Concerning the sale of covered battery-containing products that are not
30 approved products if the sale occurred prior to October 1, 2019;

31 (3) Concerning the sale of covered batteries manufactured prior to July 1, 2018 if
32 the sale occurred prior to October 1, 2018;

33 (4) Concerning the sale of covered battery-containing products manufactured
34 prior to July 1, 2018 if the sale occurred prior to October 1, 2019; or

35 (5) Concerning the sale of medical devices manufactured prior to July 1, 2019 if
36 the sale occurred prior to October 1, 2020.

37 D. The commissioner may not initiate an enforcement action under this section
38 against a manufacturer, distributor, wholesaler or retailer:

39 (1) For selling or offering for sale a covered battery or covered battery-
40 containing product if that entity, within 90 days of discovering that the battery or

1 product is not in compliance with this section, removes the battery or product
2 from sale; or

3 (2) For purchasing a covered battery or covered battery-containing product after
4 the effective date of this section that is verified to be an approved product at the
5 time of purchase but that is no longer an approved product at the time it is sold by
6 that entity.

7 **16. Limited private right of action.** Except as provided in paragraph F, a producer
8 or organization that has submitted a plan for the establishment of a covered battery
9 stewardship program that has been approved by the commissioner and that has been
10 implemented to collect, transport and recycle discarded covered batteries in the State may
11 maintain a civil action in Superior Court against a producer or organization not
12 participating in its program to recover a portion of its costs and additional sums, as set
13 forth in this subsection.

14 A. Damages recoverable under this subsection include a fair share of the actual costs
15 incurred by a plaintiff producer or organization in collecting covered batteries of a
16 defendant producer or organization discarded in the State for which the defendant
17 was required under this section to submit and implement a covered battery
18 stewardship plan or join an existing covered battery stewardship program, as well as
19 the plaintiff's costs incurred in handling, transporting and recycling or properly
20 disposing of the defendant's batteries. Additional amounts recoverable under this
21 subsection include an award of reasonable attorney's fees and court costs, including
22 expert witness fees.

23 B. In an action by a plaintiff producer or organization against a defendant producer
24 or organization that did not operate or participate in a covered battery stewardship
25 program established under this section during the time period in which discarded
26 covered batteries of the defendant were collected, transported and recycled by the
27 plaintiff, the plaintiff may establish the defendant's fair share of the plaintiff's actual
28 costs by:

29 (1) Providing the court with market share data that the court finds reasonably
30 represent the percentage of sales of covered batteries by the defendant in the
31 State;

32 (2) Providing the court with data generated from discarded covered battery sorts
33 involving a minimum of 500 pounds of discarded covered batteries collected at
34 each of 3 or more collection locations in the State that are found by the court to
35 have been collected in an unbiased manner and to be reasonably representative of
36 the population of the State; or

37 (3) Through any other method that the court finds reliable in establishing the
38 defendant's fair share of the plaintiff's actual costs.

39 C. In an action by a plaintiff producer or organization against a defendant producer
40 or organization that operated or participated in a covered battery stewardship program
41 established under this section during the time period in which discarded covered
42 batteries of the defendant were collected, transported and recycled by the plaintiff,
43 the plaintiff may establish the defendant's fair share of the plaintiff's actual costs by

PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE

Maine Freedom of Access Act - public records exceptions

Enacted 2005 - 2012

(Revised 6/22/2016)

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
46	21-A	1125	2-B	Title 21-A, section 1125, subsection 2-B, relating to records of individuals who made Clean Elections gubernatorial seed money contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices		Indefinitely postpone because citizen's initiative repealed this exception
3	1	402	3	Title 1, section 402, subsection 3, paragraph N, relating to Social Security Numbers	Department of Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive Director; Administrative Office of the Courts		No Modification
4	1	402	3	Title 1, section 402, subsection 3, paragraph O, relating to personal contact information concerning public employees other than elected officials	Department of Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive Director; Administrative Office of the Courts		No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
7	1	402	3	Title 1, section 402, subsection 3, paragraph R, relating to Social Security numbers in possession of the Secretary of State	Secretary of State		No Modification
9	1	1013	2	Title 1, section 1013, subsection 2, relating to the identity of a requestor of Commission on Governmental Ethics and Election Practices opinions	Commission on Governmental Ethics and Election Practices		No Modification
10	1	1013	4	Title 1, section 1013, subsection 4, relating to Commission on Governmental Ethics and Election Practices records other than complaints	Commission on Governmental Ethics and Election Practices		No Modification
11	1	1013	3-A	Title 1, section 1013, subsection 3-A, relating to complaint alleging a violation of legislative ethics	Commission on Governmental Ethics and Election Practices		No Modification
49	22	2425	8	Title 22, section 2425, subsection 8, relating to medical marijuana registry identification cards	Department of Health and Human Services		No Modification
52	22	4087-A	6	Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman	Child Welfare Ombudsman		No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
70	36	6271	2	Title 36, section 6271, subsection 2, relating to an application, information submitted in support of an application and files and communications in relation to a municipal property tax deferral program for senior citizens	Maine Municipal Association		No Modification
71	38	1310-B	2	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	Department of Environmental Protection		No Modification
72	38	580-B	11	Title 38, section 580-B, subsection 11, relating to records held by the Department of Environmental Protection or its agents regarding individual auctions administered under the carbon dioxide cap-and-trade program	Department of Environmental Protection		No Modification
44	21-A	1003	3-A	Title 21-A, section 1003, subsection 3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices	Maine Commission on Governmental Ethics and Election Practices		No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
45	21-A	1125	3	Title 21-A, section 1125, subsection 3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices		No Modification
47	21-A	196-A		Title 21-A, section 196-A, relating to information contained electronically in the central voter registration system	Secretary of State		No Modification
55	29-A	1301	6-A	Title 29-A, section 1301, relating to the social security number of an applicant for a driver's license or nondriver identification card	Secretary of State		No Modification
63	30-A	4706	1	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities	Maine State Housing Authority (MaineHousing)		No Modification
68	35-A	122	1-B	Title 35-A, section 122, subsection 1-B, paragraph G, relating to information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use in the context of energy infrastructure corridors	Interagency Review Panel (Governor's Energy Office)		No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
5	1	402	3	Title 1, section 402, subsection 3, paragraph P, relating to geographic information regarding recreational trails on private land	Department of Inland Fisheries and Wildlife; Department of Agriculture, Conservation and Forestry		No Modification (Adopted)
8	1	538	3	Title 1, section 538, subsection 3, relating to InforME subscriber information	Information Resources of Maine (InforME)		No Modification (Adopted)
12	4	1806		Title 4, section 1806, relating to certain information and records in the possession of the Maine Commission on Indigent Legal Services	Maine Commission on Indigent Legal Services		No Modification (Adopted)
14	5	17057	3	Title 5, section 17057, subsection 3, relating to home contact information of Maine Public Employees Retirement System members, benefit recipients and staff	Maine Public Employees Retirement System		No Modification (Adopted)
15	5	17057	4	Title 5, section 17057, subsection 4, relating to Maine Public Employees Retirement System private market investment activity	Maine Public Employees Retirement System		No Modification (Adopted)

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
16	5	17057	5	Title 5, section 17057, subsection 3, relating to Maine Public Employees Retirement System employees personal and complaint and disciplinary information	Maine Public Employees Retirement System		No Modification (Adopted)
17	5	90-B	7	Title 5, section 90-B, subsection 7, relating to the Address Confidentiality Program	Secretary of State		No Modification (Adopted)
18	7	1052	2-A	Title 7, section 1052, subsection 2-A, relating to total potential acreage of genetically modified crops reported by individual manufacturers	Department of Agriculture, Conservation and Forestry		No Modification (Adopted)
20	8	1006	1	Title 8, section 1006, subsection 1, paragraph A, relating to information or records required by the Gambling Control Board for licensure; trade secrets and proprietary information	Department of Public Safety		No Modification (Adopted)

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
21	8	1006	1	Title 8, section 1006, subsection 1, paragraph B, relating to information or records required by the Gambling Control Board for licensure: would be unwarranted invasion of privacy of key executive, gaming employee or another person	Department of Public Safety		No Modification (Adopted)
22	8	1006	1	Title 8, section 1006, subsection 1, paragraph C, relating to information or records required by the Gambling Control Board for licensure: key executive or gaming employee compensation	Department of Public Safety		No Modification (Adopted)
23	8	1006	1	Title 8, section 1006, subsection 1, paragraph D, relating to information or records required by the Gambling Control Board for licensure: financial, statistical and surveillance information related to the applicant	Department of Public Safety		No Modification (Adopted)
24	8	1006	1	Title 8, section 1006, subsection 1, paragraph E, relating to information or records required by the Gambling Control Board for licensure: creditworthiness, credit rating or financial condition of person or project	Department of Public Safety		No Modification (Adopted)

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
25	8	1006	1	Title 8, section 1006, subsection 1, paragraph F, relating to information or records required by the Gambling Control Board for licensure; information from other jurisdictions conditioned on remaining confidential	Department of Public Safety		No Modification (Adopted)
26	8	1006	1	Title 8, section 1006, subsection 1, paragraph G, relating to information or records required by the Gambling Control Board for licensure; information designated confidential under federal law	Department of Public Safety		No Modification (Adopted)
27	8	1006	1	Title 8, section 1006, subsection 1, paragraph H, relating to information or records required by the Gambling Control Board for licensure; specific personal information, including Social Security number, of any individual	Department of Public Safety		No Modification (Adopted)
28	8	1006	3	Title 8, section 1006, subsection 3, relating to records and information developed as part of suitability requirement to select operator of central site monitoring system, held by Gambling Control Board and Dept. of Public Safety	Department of Public Safety		No Modification (Adopted)

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
29	8	1006	4	Title 8, section 1006, subsection 4, relating to financial, statistical and surveillance information from the central site monitoring system held by the Gambling Control Board and the Dept. of Public Safety	Department of Public Safety		No Modification (Adopted)
30	8	1007	2	Title 8, section 1007, subsection 2, relating to information or records received by the Gambling Control Board or Department of Public Safety from another agency pursuant to agreement	Department of Public Safety		No Modification (Adopted)
31	8	1008		Title 8, section 1008, relating to information or records used or produced by the Gambling Control Board or Department of Public Safety in connection with hearings, proceedings or appeals pursuant to Title 8, section 1052	Department of Public Safety		No Modification (Adopted)
32	8	1052		Title 8, section 1052, relating to reports, information or records compiled by the Gambling Control Board and Dept. of Public Safety concerning noncompliance with or violation of the chapter by an applicant, licensee, owner or key executive	Department of Public Safety		No Modification (Adopted)

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
33	8	270-A		Title 8, section 270-A, relating to records and information included in application or materials required for issuance of commercial track license	Department of Agriculture, Conservation and Forestry		No Modification (Adopted)
48	22	1494		Title 22, section 1494, relating to occupational disease reporting	Department of Health and Human Services		No Modification (Adopted)
34	9-A	6-105-A		Title 9-A, section 6-105-A, last paragraph, relating to information concerning uniform multistate licensing system provided to Consumer Credit Protection by other jurisdictions	Department of Professional and Financial Regulation - Bureau of Consumer Credit Protection		No Modification (Adopted)
19	7	2231	3	Title 7, section 2231, subsection 3, relating to criminal history records provided to the Commissioner of Agriculture, Conservation and Forestry as part of an application to grow industrial hemp for commercial purposes	Department of Agriculture, Conservation and Forestry		Repealed by PL 2009, ch. 320, section 1
1	1	402	2	Title 1, section 402, subsection 2, paragraph G, relating to committee meetings pertaining to interscholastic sports	Maine Principal's Association - Interscholastic Management Committee	MPA response that it is not a public body	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
2	1	402	3	Title 1, section 402, subsection 3, paragraph C-1, relating to legislative working papers	Legislative Council, Executive Director		
6	1	402	3	Title 1, section 402, subsection 3, paragraph Q, relating to security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events for Department of Corrections or county jail	Department of Corrections		
13	5	1541	10-B	Title 5, section 1541, subsection 10-B, relating to internal audit working papers of the State Controller	Department of Administrative and Financial Services - Office of the State Controller		
35	12	8005	1	Title 12, section 8005, subsection 1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	Department of Agriculture, Conservation and Forestry	Tabled	

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
36	12	8005	2	Title 12, section 8005, subsection 2, relating to Social Security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs	Department of Agriculture, Conservation and Forestry	Tabled	
37	12	8005	4	Title 12, section 8005, subsection 4, relating to forest management information designated confidential by agency furnishing the information	Department of Agriculture, Conservation and Forestry	Tabled	
38	12	10110		Title 12, section 10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license	Department of Inland Fisheries and Wildlife	Tabled	
39	12	12551-A	10	Title 12, section 12551-A, subsection 10, relating to smelt dealers reports, including name, location, gear and catch	Department of Inland Fisheries and Wildlife	Tabled	
40	14	6321-A	4	Title 14, section 6321-A, subsection 4, relating to the financial information disclosed in the course of mediation under the foreclosure mediation program	Administrative Office of the Courts	Repealed by PL 2015, ch. 202, section 1.	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
50	22	1711-C	20	Title 22, section 1711-C, subsection 20, relating to hospital records concerning health care information pertaining to an individual	HealthInfoNet	Response that HealthInfoNet is not a public body	
51	22	2153-A		Title 22, section 2153-A, relating to information provided to the Department of Health and Human Services by the U.S. Department of Agriculture and the U.S. Food and Drug Administration that is confidential under federal law	Department of Health and Human Services	DHHS response that ACF is custodian	
54	25	4202		Title 25, section 4202, relating to records and information connected in any way with the work of a critical incident stress management team for law enforcement personnel	Department of Public Safety		
58	32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	Department of Public Safety		

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
59	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board	Department of Public Safety		
60	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to information about a person receiving emergency medical services as part of an application for credentialing by Emergency Medical Services Board	Department of Public Safety		
61	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to the trauma incidence registry under section 87-B	Department of Public Safety		
62	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board	Department of Public Safety		

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
41	17-A	1176	1	Title 17-A, section 1176, subsection 1, relating to information that pertains to current address or location of crime victims	Department of Public Safety		
42	17-A	1176	5	Title 17-A, section 1176, subsection 5, relating to request by crime victim for notice of release of defendant	Department of Corrections		
43	20-A	13004	2-A	Title 20-A, section 13004, subsection 2-A, relating to complaints, charges and accusations concerning certification and registration of educational personnel	Department of Education	Advisory Committee wrote letter to Education and Cultural Affairs Committee asking for subject matter guidance; SEE RESPONSE LETTER FROM EDU TO RTKAC	
53	24-A	2736	2	Title 24-A, section 2736, subsection 2, relating to insurer rate filings on individual health insurance policies and supporting information, in regards to protected health information and descriptions of the amount and terms or conditions or reimbursement in a contract between an insurer and a 3rd party	Department of Professional and Financial Regulation - Bureau of Insurance	Review not necessary; not a new PR exception	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
56	29-A	2251	7-A	Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in an accident report database	Department of Public Safety		
57	29-A	2117-A	4	Title 29-A, section 2117-A, relating to data collected or retained through the use of an automated license plate recognition system	Department of Public Safety; Department of Transportation		
64	34-A	11221	13	Title 34-A, section 11221, subsection 13, relating to disclosure of certain sex offender registry information	Department of Public Safety		
65	34-A	11221	9-A	Title 34-A, section 11221, subsection 9-A, relating to certain sex offender registry information	Department of Public Safety		
66	34-B	1931	6	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board	Mental Health Homicide, Suicide, and Aggravated Assault Review Board (MHSAARB)		
67	34-B	3864	12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	Department of Public Safety		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
69	35-A	10106		Title 35-A, section 10106 relating to records of the Efficiency Maine Trust and its board	Efficiency Maine	Subcommittee requested that proposed amendment from Efficiency Maine be in bill format	

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STATE OF MAINE
 ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
 COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS

March 1, 2016

Sen. David C. Burns, Chair
 Right to Know Advisory Committee
 127th Maine Legislature
 Second Regular Session

RE: Review of Public Records Exception Affecting the Department of Education

Dear Sen. Burns:

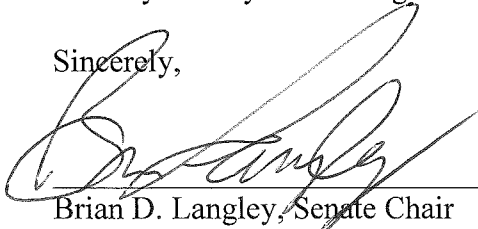
By letter dated January 6, 2016, the Right to Know Advisory Committee requested that the Education and Cultural Affairs Committee review a public records exception affecting the ability of the Department of Education to share certain education certification information with other states. We reviewed the exception at 20-A MRSA §13004(2-A)(A)&(B), and determined that no amendment to statute is necessary at this time.

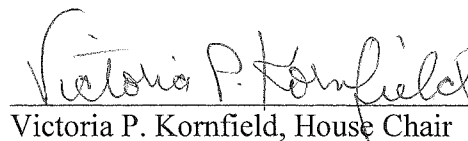
We agree with the Right to Know Advisory Committee that section 13004 does prohibit the disclosure of information that is designated confidential under Title 20-A, sections 6101 and 6103. However, when the Department of Education provided further information regarding the interstate exchange in which it participates, we concluded that the prohibitions in section 13004 are not currently affecting the Department's ability to participate in that exchange. The exchange – the National Association of State Directors of Teacher Education and Certification – relies on information derived from final determinations in certification actions (i.e. certification denial, revocation or suspension). In Maine, this information is within the definition of a “public record” under Title 20-A, section 6101(2)(C) and section 13004(2-A)(D), and can therefore be shared freely.

The Department has indicated that it may seek an amendment to section 13004 to clarify its language, and we welcome a proposal in the future.

Thank you for your thorough review and for bringing this potential issue to our attention.

Sincerely,


 Brian D. Langley, Senate Chair


 Victoria P. Kornfield, House Chair

cc: Members, Joint Standing Committee on Education and Cultural Affairs

Potential topics and projects for 2016

- Judiciary Committee request - review the public records exception enacted in LD 484, which relates to hazardous material transported by railroads. *(See letter.)*
- Judiciary Committee request - develop comprehensive recommendations for the treatment of personal contact information for professions and occupations regulated by the State (LD 1499) *(See letter.)*
- Ken Capron request - funding FOAA cases by indigent people and the possibility of developing a court form for a pro se complainant. *(See email.)*
- Jack Comart (Maine Equal Justice Partners) suggestions – agency time and cost estimates, fee waiver policies, remedies for requestors. *(See email.)*

SENATE

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HENRY D. FOUTS, LEGISLATIVE ANALYST
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THEODORE BEAR MITCHELL I, PENOBSCOT NATION

STATE OF MAINE
ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
COMMITTEE ON JUDICIARY

February 24, 2016

Senator David C. Burns, Chair
Representative Kimberly J. Monaghan, Co-Chair
Members
Right to Know Advisory Committee

Re: Railroad cargo public records exception

Dear Right to Know Advisory Committee Members:

During the First Regular Session of the 127th Legislature, the Judiciary Committee heard, worked and reported out LD 484, An Act Regarding the Confidentiality of Railroad Carrier Cargo, sponsored by Representative Shaw. The bill originally proposed a public records exception for records describing "commodities transported by a railroad" in the possession of law enforcement, fire departments or other first responders or emergency management entities.

The testimony at the public hearing indicated that railroads wanted to provide information to emergency entities and first responders, but were concerned that all the information would become public which could cause business consequences or result in heightened security concerns. Representative Shaw, Pan Am Railways and St. Lawrence and Atlantic Railroad testified in favor of the bill. No other individuals, organizations or entities provided testimony or participated in the public hearing or work sessions.

The Judiciary Committee ended up reporting out the bill with a narrowed public records exception, limited to hazardous material, as defined by the federal Department of Transportation, reported by a railroad company to state or local emergency management entity or law enforcement agency, a fire department or other first responder. The public records exception covers the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes. The Judiciary Committee discussed the confidentiality and public interest issues in the proposed bill and the amendment they finally approved, which they always do when considering public records exceptions. Members of the Committee were concerned that information about hazardous materials could be used in the furtherance of terrorism and


supported the confidentiality provision in the interest of public safety. The bill was enacted by the Legislature, vetoed by the Governor, and the veto was overridden. It is now Public Law 2015, chapter 161, codified as Title 1, section 402, subsection 3, paragraph U.


Recent publications have indicated that the new public records exception has caused problems for citizens trying to know whether crude oil is being transported through the State. The Judiciary Committee did not receive any information about public concerns in this area, and we would like to ensure that the public has an additional opportunity to comment and recommend changes, if necessary. The Judiciary Committee therefore requests that the Right to Know Advisory Committee include in its continuing review of existing public records exceptions Title 1, section 402, subsection 3, paragraph U. The Judiciary Committee will be happy to share all files and correspondence.

Please feel free to contact us or our committee analyst if you have any questions.

Thank you.

Sincerely,


Senator David C. Burns
Senator Chair


Representative Barry J. Hobbins
House Chair

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

—
H.P. 323 - L.D. 484

An Act Regarding the Confidentiality of Railroad Carrier Cargo

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §402, sub-§3, ¶S, as amended by PL 2013, c. 518, §2, is further amended to read:

S. E-mail addresses obtained by a political subdivision of the State for the sole purpose of disseminating noninteractive notifications, updates and cancellations that are issued from the political subdivision or its elected officers to an individual or individuals that request or regularly accept these noninteractive communications; ~~and~~

Sec. 2. 1 MRSA §402, sub-§3, ¶T, as enacted by PL 2013, c. 518, §3, is amended to read:

T. Records describing research for the development of processing techniques for fisheries, aquaculture and seafood processing or the design and operation of a depuration plant in the possession of the Department of Marine Resources; and

Sec. 3. 1 MRSA §402, sub-§3, ¶U is enacted to read:

U. Records provided by a railroad company describing hazardous materials transported by the railroad company in this State, the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes that are in the possession of a state or local emergency management entity or law enforcement agency, a fire department or other first responder. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5.

SENATE

DAVID C. BURNS, DISTRICT 6, CHAIR
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CHRISTOPHER K. JOHNSON, DISTRICT 13

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HOUSE

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THEODORE BEAR MITCHELL I, PENOBSCOT NATION

STATE OF MAINE
ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
COMMITTEE ON JUDICIARY

April 15, 2016

Senator David C. Burns, Chair
Representative Kimberly J. Monaghan, Co-Chair
Members
Right to Know Advisory Committee

Re: State regulation of professions and occupations: personal contact information

Dear Right to Know Advisory Committee Members:

During the Second Regular Session of the 127th Legislature, the Judiciary Committee heard, worked and reported out LD 1499, An Act to Increase the Safety of Social Workers, sponsored by Representative Goode. The bill originally proposed to designate as confidential the home address of licensed social workers held by the State Board of Social Worker Licensure. The purpose is to ensure that social workers and their families cannot be tracked down and endangered at home by emotionally distraught clients or others the social workers come into contact with professionally. The Judiciary Committee has sympathy for those concerns.

The Judiciary Committee also recognizes that the State regulates professions and occupations in the interest of public safety and welfare. Professional and Financial Regulation Commissioner Anne Head provided the following testimony.

State regulation of a profession or occupation is a public process. Licensing board meetings are open to the public, adjudicatory hearing proceedings are open to the public, and information submitted by applicants seeking state licenses is in the public domain. A license application and information contained within an application – with one exception – is considered a “public record” under Title 1, section 402. The only item of information required on a license application that is confidential is an applicant’s social security number pursuant to Title 1, section 402(3)(N).

The notice to applicants on every application form includes the sentence, “Names, license numbers and mailing addresses listed on or submitted as part of this application will be available to the public and may be posted on our website.”

A few licensing entities other than those boards that are part of the Department of Professional and Financial Regulation do provide confidentiality for personal contact information of their licensees, including the Emergency Medical Services Board, the Board of Licensure in Medicine, the Board of Osteopathic Licensure, the State Board of Nursing and the Department of Public Safety as it licenses professional investigators.

The Judiciary Committee ended up reporting out the bill as amended, replacing the proposed text with language designating the address and telephone number of an applicant as well as a licensee under the Social Worker chapter as confidential when in the possession of the licensing board. It specifically provides that the board and its staff may use and disclose the address and telephone number as necessary to perform the duties and functions of the board.

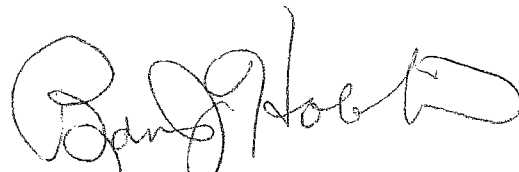
The Judiciary Committee would like to see a uniform policy for the treatment of personal contact information for professions and occupations regulated by the State. We are therefore requesting that the Right to Know Advisory Committee take up this topic and try to develop comprehensive recommendations that can be applied to all professions and occupations, balancing the protection of privacy with the public interest in an open and transparent regulatory process, a regulatory process whose underlying purpose is the protection of the health, safety and welfare of the public. In the case of social workers, their privacy interest includes the need to manage their risk in a profession that can present danger because of the nature of their work; this is a concern that may apply in several professions and occupations. Commissioner Head has agreed to work with the Advisory Committee to provide the Department's input in discussions and formulations of appropriate requirements. The Judiciary Committee will be happy to share all files and correspondence on this bill.

Please feel free to contact us or our committee analyst if you have any questions.

Thank you.

Sincerely,


Senator David C. Burns
Senator Chair


Representative Barry J. Hobbins
House Chair

Attachment: Committee Amendment to LD 1499

c: Commissioner Anne Head, DPFR
Lori Gramlich, NASW Maine Chapter

Fouts, Henry

From: WatchDog [<mailto:watchdog@maine.rr.com>]
Sent: Wednesday, February 17, 2016 6:19 PM
To: Reinsch, Margaret
Subject: LD 1586 - proposed committee amendment

Hi Peggy,
Glad to see FOAA is catching up with the 21st Century.

Now – how about the RTK Committee find a way to fund FOAA cases by indigent people. The cheapest retainer I have found is \$7,500 – \$10,000. That’s just the retainer. We have to make the appeals process cheaper, slicker and perhaps easier for Pro Se filers.

Can the Ombudsperson develop a Court ‘form’ that could get a Pro Se complainant through the door?

As I often say, it does no good to have laws on the books that an average person cannot afford to enforce.

Ken Capron

From: [Reinsch, Margaret](#)
Sent: Wednesday, February 17, 2016 12:11 PM
To: jud-ip@lists.legislature.maine.gov
Subject: [jud-ip] LD 1586 - proposed committee amendment

Attached please find a proposed committee amendment that Senator Johnson will offer for consideration at the public hearing on LD 1586, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Remote Participation in Public Proceedings.

The public hearing is scheduled for Wednesday, February 24, 2016, at 10:00 a.m. in Room 438 of the State House.

Audio of the public hearing can be streamed live: <http://legislature.maine.gov/calendar/#Committees/JUD>

Please let me know if you have any questions.

Thank you
Peggy

Margaret J. Reinsch, Esq., Legislative Analyst
Joint Standing Committee on Judiciary
Maine State Legislature
Office of Policy and Legal Analysis
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Fouts, Henry

From: Jack Comart [<mailto:jcomart@mejp.org>]
Sent: Tuesday, April 26, 2016 2:26 PM
To: Reinsch, Margaret
Cc: Kielty, Brenda
Subject: Right to Know Advisory Committee

Dear Peggy,

After some recent unsatisfactory experiences with using the FOAA, I had some suggestions for changes to the current law that I hope the Advisory Committee might have an interest in pursuing. Here are my suggestions:

1. Section 408-A (9) should be amended to require the agency to provide the estimate of time and cost for each separate component of any request for information. (In one of our FOAA requests, we had 6 separate requests for data. The agency imposed a fee on the entire request which we could not pay. We believe that some or most of the data requested could have been provided quickly and at little or no cost.)
2. Section 408-A (11) should be amended to require the agency to publically post and otherwise make available their fee waiver policy. (In one of our cases, we submitted a fee waiver request. We were then asked to provide additional information to support the request. Ultimately, we were told that no fee waiver would be granted because the agency (DHHS) does not grant fee waiver requests.)
3. Section 408-A (11) should be amended to require the agency to grant fee waiver requests based upon reasonable standards. (As noted above, the policy at DHHS is to never grant a fee waiver request. If FOAA is going to be a meaningful tool to ensure that public records are available for inspection and copying, then agencies must provide reasonable access.)
4. Section 408-A(9) should be clarified to state when the estimate of time and cost is provided. Is it provided within the five (5) response time? (In our case, the agency (DHHS) provides a boilerplate response within 5 days that contains no estimate of time and simply states that "if the estimate exceeds \$30" that DHHS will not proceed without payment of the estimated cost if the estimate exceeds \$100. Besides being virtually incomprehensible to the ordinary person, it fails to reasonably inform the person of the estimated time or cost. On the other hand, it does seem burdensome to require the agency to provide the estimation of cost and time within 5 days. However, at some point, perhaps within 14 days of the request, there should be a good faith estimate of the time and cost for each component of the FOAA request. The law should then provide for some process whereby the requester and the agency can agree to some less costly, less burdensome request.
5. Finally, there appears to be no recourse for agency action which may be arbitrary or capricious. For example, if agencies provide bad faith estimates of cost or time to discourage use of FOAA or to provide access only to the politically favored, then people and businesses in Maine should have the right to some administrative and/or court process to challenge these sorts of acts. (For example, in one of our cases with DHHS, they provided a response in 5 days that granted our request, but provided no estimate of costs or time, and which then took months to respond to, even though most of the data was easily retrievable. At some point, agencies should be held accountable.)

Thanks for considering this request.

Jack

Jack Comart
Maine Equal Justice Partners, Inc.
126 Sewall Street
Augusta, ME 04330
(207) 626-7058, ext. 202
(207) 621-8148 (fax)
jcomart@mejp.org

Save the Date for MEJP's 20th Anniversary Celebration!
Thursday, June 2nd, 5 to 7:30 p.m. at Maple Hill Farm, Hallowell
Registration details are on our website: www.mejp.org

RIGHT TO KNOW ADVISORY COMMITTEE

AGENDA

July 20, 2016

1:00 p.m.

Room 438, State House, Augusta

Convene

1. Welcome and Introductions
2. Review of public records exception enacted in LD 484 (Public Law 2015, chapter 161) relating to hazardous material transported by railroads
3. Review and potentially develop recommendations for treatment of personal contact information for professions and occupations licensed by the State
4. Update on meeting between Sen. Burns and Rep. Monaghan and presiding officers relating to Freedom of Access requests made to Maine Warden Service; Advisory Committee request to Colin Woodard and Sigmund Schutz for input and suggestions for changes in policy or law or for the development of best practices
5. Review subcommittee recommendations relating to existing public records exceptions
6. *Potential topic for future discussion*- Consider legislation requiring local boards and committees to record their executive sessions and to preserve these records so that they may be legally discoverable if there is a later dispute about either the content or propriety of the discussion held during these sessions
7. *Potential topic for future discussion* - Review of 10 factors for estimating time to respond to a request under the Freedom of Access Act suggested by Eric Stout
8. Other items?

Adjourn

BACKGROUND INFORMATION:

Public records exception for records relating to hazardous materials transported by railroads

- A. Letter to RTKAC from Judiciary Committee outlining request to consider issue
- B. Public Law 2015, chapter 161
- C. Governor's veto letter (veto overridden)
- D. Original bill and Committee amendment
- E. Written testimony submitted at public hearing
- F. Media publications raising issue related to availability of information to the public about crude oil transported in Maine, Center for Public Interest Reporting, February and March 2016
- G. Current law definition of "public record", 1 MRSA §402, sub-§3
- H. Checklist based on 1 MRSA §432, sub-§2
- I. Response to Questionnaire Submitted by DEP, rec'd 7/14/16

SENATE

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CHRISTOPHER K. JOHNSON, DISTRICT 13

MARGARET J. REINSCH, SENIOR LEGISLATIVE ANALYST
HENRY D. FOUTS, LEGISLATIVE ANALYST
SUSAN M. PINETTE, COMMITTEE CLERK



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THEODORE BEAR MITCHELL I, PENOBSCOT NATION

STATE OF MAINE
ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
COMMITTEE ON JUDICIARY

February 24, 2016

Senator David C. Burns, Chair
Representative Kimberly J. Monaghan, Co-Chair
Members
Right to Know Advisory Committee

Re: Railroad cargo public records exception

Dear Right to Know Advisory Committee Members:

During the First Regular Session of the 127th Legislature, the Judiciary Committee heard, worked and reported out LD 484, An Act Regarding the Confidentiality of Railroad Carrier Cargo, sponsored by Representative Shaw. The bill originally proposed a public records exception for records describing "commodities transported by a railroad" in the possession of law enforcement, fire departments or other first responders or emergency management entities.

The testimony at the public hearing indicated that railroads wanted to provide information to emergency entities and first responders, but were concerned that all the information would become public which could cause business consequences or result in heightened security concerns. Representative Shaw, Pan Am Railways and St. Lawrence and Atlantic Railroad testified in favor of the bill. No other individuals, organizations or entities provided testimony or participated in the public hearing or work sessions.

The Judiciary Committee ended up reporting out the bill with a narrowed public records exception, limited to hazardous material, as defined by the federal Department of Transportation, reported by a railroad company to state or local emergency management entity or law enforcement agency, a fire department or other first responder. The public records exception covers the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes. The Judiciary Committee discussed the confidentiality and public interest issues in the proposed bill and the amendment they finally approved, which they always do when considering public records exceptions. Members of the Committee were concerned that information about hazardous materials could be used in the furtherance of terrorism and


supported the confidentiality provision in the interest of public safety. The bill was enacted by the Legislature, vetoed by the Governor, and the veto was overridden. It is now Public Law 2015, chapter 161, codified as Title 1, section 402, subsection 3, paragraph U.


Recent publications have indicated that the new public records exception has caused problems for citizens trying to know whether crude oil is being transported through the State. The Judiciary Committee did not receive any information about public concerns in this area, and we would like to ensure that the public has an additional opportunity to comment and recommend changes, if necessary. The Judiciary Committee therefore requests that the Right to Know Advisory Committee include in its continuing review of existing public records exceptions Title 1, section 402, subsection 3, paragraph U. The Judiciary Committee will be happy to share all files and correspondence.

Please feel free to contact us or our committee analyst if you have any questions.

Thank you.

Sincerely,


Senator David C. Burns
Senator Chair


Representative Barry J. Hobbins
House Chair

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

H.P. 323 - L.D. 484

An Act Regarding the Confidentiality of Railroad Carrier Cargo

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §402, sub-§3, ¶S, as amended by PL 2013, c. 518, §2, is further amended to read:

S. E-mail addresses obtained by a political subdivision of the State for the sole purpose of disseminating noninteractive notifications, updates and cancellations that are issued from the political subdivision or its elected officers to an individual or individuals that request or regularly accept these noninteractive communications; and

Sec. 2. 1 MRSA §402, sub-§3, ¶T, as enacted by PL 2013, c. 518, §3, is amended to read:

T. Records describing research for the development of processing techniques for fisheries, aquaculture and seafood processing or the design and operation of a depuration plant in the possession of the Department of Marine Resources; and

Sec. 3. 1 MRSA §402, sub-§3, ¶U is enacted to read:

U. Records provided by a railroad company describing hazardous materials transported by the railroad company in this State, the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes that are in the possession of a state or local emergency management entity or law enforcement agency, a fire department or other first responder. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5.

COMMUNICATIONS

(2-1) The Following Communication: (H.C. 213)

and accompanying veto, item (2-2)

**STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0001**

June 10, 2015

The 127th Legislature of the State of Maine
State House
Augusta, Maine

Dear Honorable Members of the 127th Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 484, "An Act Regarding the Confidentiality of Railroad Carrier Cargo."

This bill adds an additional public records exception to the Freedom of Access Act to cover records describing hazardous materials transported by a railroad in this State when those records are in the possession of law enforcement, fire departments or other first responders or emergency management entities. In essence, railroad companies want these records shielded from public view when they are in the possession of first responders and emergency management entities.

One of the hallmarks of my administration has been transparency in government; another has been the protection of Maine citizens. I cannot support a bill that is inconsistent with these goals. When information about hazardous cargo traveling through this State is in the possession of first responders and/or emergency management entities, it is highly possible that one reason these entities have this information in the first place is that something has gone wrong. I am not at all comfortable shielding this information from the Maine citizens that may be placed in harm's way by these transports. If trains are carrying hazardous materials through our State and this information is shared with our first responders and emergency management entities, then this information needs to be available to our citizens.

For these reasons, I return LD 484 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,

S/Paul R. LePage
Governor

(2-2) The accompanying item An Act Regarding the Confidentiality of Railroad Carrier Cargo
(H.P. 323) (L.D. 484)
(C. "A" H-181)



127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 484

H.P. 323

House of Representatives, February 24, 2015

An Act Regarding the Confidentiality of Railroad Carrier Cargo

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative SHAW of Standish.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 1 MRSA §402, sub-§3, ¶S**, as amended by PL 2013, c. 518, §2, is further
3 amended to read:

4 S. E-mail addresses obtained by a political subdivision of the State for the sole
5 purpose of disseminating noninteractive notifications, updates and cancellations that
6 are issued from the political subdivision or its elected officers to an individual or
7 individuals that request or regularly accept these noninteractive communications; ~~and~~

8 **Sec. 2. 1 MRSA §402, sub-§3, ¶T**, as enacted by PL 2013, c. 518, §3, is
9 amended to read:

10 T. Records describing research for the development of processing techniques for
11 fisheries, aquaculture and seafood processing or the design and operation of a
12 depuration plant in the possession of the Department of Marine Resources; and

13 **Sec. 3. 1 MRSA §402, sub-§3, ¶U** is enacted to read:

14 U. Records describing commodities transported by a railroad in this State in the
15 possession of law enforcement, fire departments or other first responders or
16 emergency management entities.

17 **SUMMARY**

18 This bill adds an additional public records exception to the Freedom of Access Act to
19 cover records describing commodities transported by a railroad in this State when those
20 records are in the possession of law enforcement, fire departments or other first
21 responders or emergency management entities.

D-2

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Date: (Filing No. H-)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 323, L.D. 484, Bill, “An Act Regarding the Confidentiality of Railroad Carrier Cargo”

Amend the bill in section 3 by striking out all of paragraph U (page 1, lines 14 to 16 in L.D.) and inserting the following:

'U. Records provided by a railroad company describing hazardous materials transported by the railroad company in this State, the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes that are in the possession of a state or local emergency management entity or law enforcement agency, a fire department or other first responder. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5.'

SUMMARY

This amendment clarifies that the exception to the definition of "public record" proposed in the bill is limited to records provided by a railroad company that describe hazardous materials that are transported by the railroad company, the routes of the hazardous materials shipments and the frequency of the hazardous materials operations, on those routes when those records are in the possession of state or local emergency management entities or law enforcement agencies, fire departments or other first responders. The amendment also provides that "hazardous material" has the same definition as in 49 Code of Federal Regulations, Section 105.5.

COMMITTEE AMENDMENT

D-3



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
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Michael A. Shaw

5 Perimeter Avenue
Standish, ME 04084

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Mike.Shaw@legislature.maine.gov

TESTIMONY OF REP. MICHAEL SHAW

BEFORE THE JOINT STANDING COMMITTEE ON JUDICIARY

LD 484: An Act Regarding the Confidentiality of Railroad Carrier Cargo

April 1, 2015

Senator Burns, Representative Hobbins and members for the Judiciary Committee, I am Representative Mike Shaw of House District 23, which includes part of Standish. I am here today as the sponsor of LD 484: An Act Regarding the Confidentiality of Railroad Carrier Cargo.

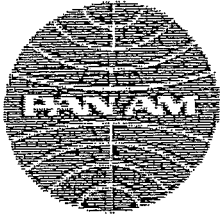
This bill proposes a narrow and specific exemption to the current public records exemptions to the state's Freedom of Access Act. Specifically, as drafted, the bill adds an additional public records exception to the Freedom of Access Act to cover records describing commodities transported by a railroad in this state when those records are in the possession of law enforcement, fire departments or other first responders or emergency management entities. I would ask that this be expanded to a general exemption to ensure any state or local agency that wants the information can access it without need for disclosure.

This is a proposal to increase safety. As you know, our railroads transport many items, some of them dangerous. Everything from crude oil to chemicals used to make paper travel our rail lines on a daily basis and the more information our local first responders can have the better. While we all hope that information is not needed, having it available in the event of an accident or other crisis can be critical.

While railroads want those officials to have that information, they are leery to provide it in a way that can be made public. The simple fact is there is a great deal of competition in the shipping business and disclosing publicly what, how much and how often you are transporting a product can be a serious competitive disadvantage.

This exemption seeks to allow our railroads to share this important information with our first responders without the fear that information will be used to cut into their business.

This narrow exemption will ensure that information is available to those who need it without damaging the intent or spirit of the state's "right to know" law. I urge you to support the bill and I am happy to answer any questions you may have.



PAN AM RAILWAYS

IRON HORSE PARK
No. BILLERICA, MA 01862

TESTIMONY OF CYNTHIA SCARANO

Executive Vice President Pan Am Railways

Before the Joint Standing Committee on Judiciary LD 484: An act regarding the Confidentiality of Railroad Carrier Cargo

Senator Burns, Representative Hobbins and members of the judiciary Committee, I am Cynthia Scarano, Executive Vice President Pan Am Railways. Pan Am Railways is in favor of LD 484 An Act regarding the confidentiality of Railroad Carrier Cargo.

Pan Am has historically tried to work with various emergency response agencies in Maine and other States by providing training in preparation for a rail related incident. Where we get to an impasse is sharing specific information in writing. Emergency responders have been requesting more specific information relating to the commodities and their quantities being shipped through Maine by Pan Am. While Pan Am sees the benefit of sharing this information, unfortunately any information shared would become a public document under current Freedom of Access laws. That is why the proposed amendment to the FOA laws is being presented today, so that Pan Am may more freely share information that will benefit emergency responders and the residents of Maine, without the risk of the information being publicly disseminated. We have historically tried to work with various emergency response agencies in Maine and other States. The risks associated with public knowledge of this information include heightened security

concerns and protection of information that might otherwise be confidential between Pan Am and shippers.

I urge you to support the bill and I am happy to answer any questions you may have.

Pine Tree Watchdog (<https://pinetreewatchdog.org/legislature-sidestepped-records-law-to-end-public-access-to-oil-train-data/>)



Categories

More

Legislature sidestepped records law to end public access to oil train data

By: DAVE SHERWOOD ©MAINE CENTER FOR PUBLIC INTEREST REPORTING | February 10, 2016

After a runaway oil train killed 47 people in Lac-Mégantic, Quebec, just miles from the Maine border in 2013, the Maine public demanded to know more about the railways here.

How much oil was moving through Maine? Which companies shipped it and along what routes? Was the government doing enough to keep communities safe?

At about the same time, the rail industry began its own campaign to keep much of that information secret (<https://www.documentcloud.org/documents/2703188-Maine-Letter-of-Confidentiality.html#document/p1/a275139>), according to interviews and correspondence with regulators.

Those efforts paid off last year when state officials – who for years had reported the volumes of monthly crude oil shipments – abruptly stopped providing them to the public in October.

The new law that gagged them not only blocked the public's right to know what dangers lurked on the train tracks, but its passage followed a haphazard process in which lawmakers repeatedly ignored red flags and safeguards designed to prioritize the public's right-to-know over private business interests.

The bill, An Act Regarding the Confidentiality of Railroad Carrier Cargo (http://legislature.maine.gov/legis/bills/bills_127th/chapters/PUBLIC161.asp), passed into law with no debate and over a forceful veto from Gov. LePage. Its sponsor, former Rep. Mike Shaw, D-Standish, had sold it as a commonsense compromise: If state officials promised to make confidential shipments of hazardous materials, he said, then railroads – who had argued such details could be used by competitors to undercut their business – would volunteer to share them.

“I thought it would facilitate communication between first responders and the railroads,” Shaw said, four months after the bill took effect.

But the spare, 80-word exemption

(<https://www.documentcloud.org/documents/2703429-Maine-127-HP-323-Item-3.html#document/p1/a275240>) did not require railroads to share information with local first responders. Instead, it simply forced the state to keep those details secret from the public.

“When people are aware of what's coming through their community, they pay attention,” said Bob Klotz, a spokesman for 350 Maine, an activist group that has protested oil-by-rail cargoes in the state. “To take that information away is very concerning.”



Contributed photo / Bangor Daily News

Former Rep. Mike Shaw, D-Standish, wanted rail carriers to provide information about hazardous materials to first responders.

Flawed Process

Shaw's legislation marked the 460th exception (<https://www.documentcloud.org/documents/2701522-Public-Records-Exceptions-Database-for-RTK.html>) to Maine's 40-year old Freedom of Access Act (<https://www.documentcloud.org/documents/2705743-Public-Access-Ombudsman-Report-2015-FINAL.html#document/p3/a276230>).

The act requires any effort to hide government information from the public to conform with a series of minimum requirements (<https://www.documentcloud.org/documents/2699934-FOAA-Statute.html#document/p26/a274192>). But the normal legislative process, which includes reviewing a 12-point checklist (<https://www.documentcloud.org/documents/2700218-Matrix-Blank-for-127th.html>) to ensure each requirement is met, was not followed in this case, according to an examination by the Maine Center for Public Interest Reporting.

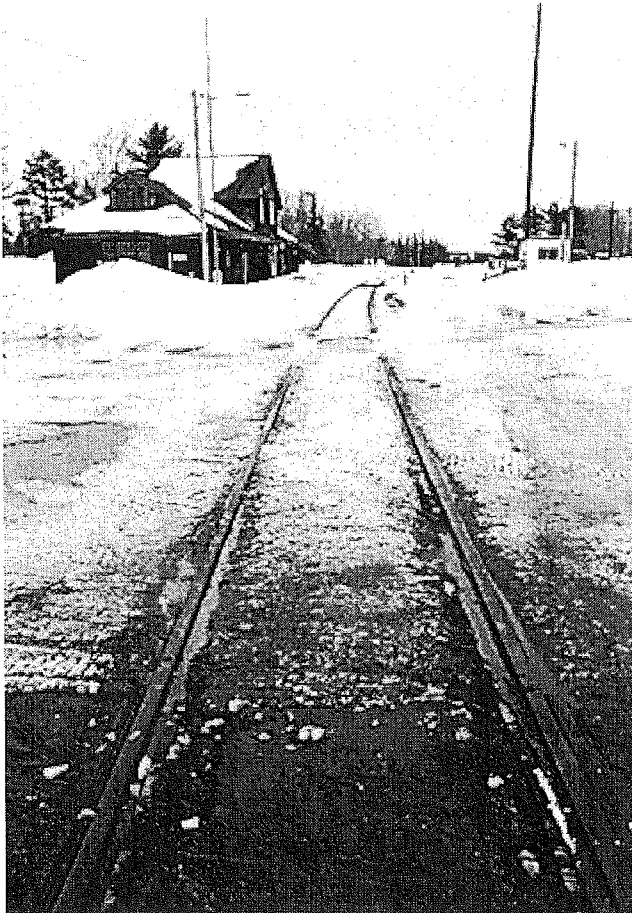
"I don't have that piece of paper and can't document that we actually did it," said Peggy Reinsch, the legislative analyst who worked on the bill, referring to the checklist.

Among the problems the Center identified:

- Private business interests must "substantially outweigh (<https://www.documentcloud.org/documents/2699934-FOAA-Statute.html#document/p27/a274576>)" the public's right-to-know in order for lawmakers to amend the state's open records act. Yet legislators failed to seek out opposing views, relying instead on industry lobbyists (<https://www.documentcloud.org/documents/2701520-AAR-EmailtoReinsch.html#document/p1/a274526>), railroad companies (<https://www.documentcloud.org/documents/2701521-PanAmTestimony.html>) and Shaw's own testimony (<https://www.documentcloud.org/documents/2698135-Testimony24382.html>), committee records show. First Amendment experts, environmentalists and state and federal railroad regulators were never consulted, leaving lawmakers with only half the story.
- Shaw's written testimony (<https://www.documentcloud.org/documents/2698135-Testimony24382.html>) implied secrecy was the only way to ensure railroads provided first responders with details about hazardous materials. But federal regulators already required railroads report large shipments (https://www.fra.dot.gov/eLib/details/LO5223#p9_z5_gD_IPR) of crude oil — among the most controversial of hazardous materials — and top U.S. Dept. of Transportation officials had encouraged states to disclose that information (<https://www.fra.dot.gov/eLib/Details/L16747>). In an interview after the bill took effect, Shaw acknowledged: "I didn't really know any of those details when I went into this."
- Shaw pitched his bill as a proposal to "increase safety," (<https://www.documentcloud.org/documents/2698135-Testimony24382.html#document/p1/a274180>) but federal regulators, including the Department of Homeland Security (<https://www.documentcloud.org/documents/2698142-Federal-Register-Oct2014.html#document/p2/a275766>), had already vetted the risks and were unconvinced. "The Department finds no basis to conclude that the public disclosure of the information is detrimental to transportation safety," stated a notice published in the Federal Register in October 2014. (<https://www.documentcloud.org/documents/2698142-Federal-Register-Oct2014.html#document/p2/a273288>) Lawmakers in Maine never discussed the notice, the culmination of a two-year-long national discussion of railroad safety. (<http://www.phmsa.dot.gov/hazmat/osd/chronology>)
- Shaw said disclosing information about trains carrying hazardous materials like crude oil put railroads at a "serious competitive disadvantage (<https://www.documentcloud.org/documents/2698135-Testimony24382.html#document/p1/a274180>)," a claim reiterated by industry lobbyists (<https://www.documentcloud.org/documents/2698142-Federal-Register-Oct2014.html#document/p2/a274522>) but unsupported by evidence (<https://www.documentcloud.org/documents/2698142-Federal-Register-Oct2014.html#document/p2/a274523>), according to federal regulators and the courts (<https://www.documentcloud.org/documents/2703441-CSX-v-MDE-Memorandum-Opinion.html>). The U.S. Department of Transportation had already determined (<https://www.documentcloud.org/documents/2698142-Federal-Register-Oct2014.html#document/p2/a274122>) information about oil shipments was not "commercially-sensitive."

- Shaw is a conductor for the passenger railroad Amtrak, according to income disclosure filings (<https://www.documentcloud.org/documents/2678427-RepMikeShaw-Disclosure2013.html#document/p2/a270490>). While ethics laws in Maine (<https://www.documentcloud.org/documents/2701342-Title1MRSACH25-GovernmentalEthics12-2015.html#document/p13/a274472>) would not have stopped Shaw from presenting the bill, the co-chairman of the Judiciary Committee reviewing the bill expressed reservations about Shaw's closeness to the industry. "I sensed a little bit of conflict of interest there," said Sen. David Burns, R-Whiting.
- The final check and balance in the law-making process was lost amid the most contentious legislative session in recent memory. Gov. LePage, who vetoed the bill alongside more than 100 others (<https://www.documentcloud.org/documents/2678915-Ld-484-Veto-Message.html>), warned lawmakers: "If trains are carrying hazardous materials through our State ...then this information needs to be available to our citizens."

As Maine goes...



Jeff Pouland Photography

Rail tracks through Jackman

Confidentiality.html#document/p1/a275139).

Two weeks later, Melanie Loyzim, then-director of the state DEP's Bureau of Remediation and Waste Management, told Pan Am vice president Cynthia Scarano that Maine's attorney general found no basis for hiding the information from the public.

Though not an oil producer, Maine had been among the largest exporting states in the nation. It's a transit point between the oil fields of western North America and the 300,000-barrel-per-day Irving oil refinery in neighboring Saint John, New Brunswick, one of New England's largest suppliers of gasoline.

As shipments spiked nationally

(<https://www.aar.org/Pages/Crude-Oil-Rail-Traffic.aspx>), citizens demanded more information but railroads increasingly lobbied to give them less (<https://www.documentcloud.org/documents/2698142-Federal-Register-Oct2014.html#document/p1/a273287>), citing security risks and the need to keep the information from competitors.

Though the Maine Department of Environmental Protection had made public summary information (<https://www.documentcloud.org/documents/2704491-Regform.html>) on many hazardous materials shipped by rail (<http://www.pressherald.com/2013/08/06/hazardous-materials-common-on-maine-railroads/>) — all of it now off-limits to the public — oil dominated the railroad's agenda.

Just 12 days after the 2013 Lac-Mégantic accident, while fires still smoldered in the city's flattened downtown, Pan Am Railways sent a letter to the DEP requesting the state keep records of crude shipments confidential

([https://www.documentcloud.org/documents/2703188-Maine-Letter-of-](https://www.documentcloud.org/documents/2703188-Maine-Letter-of-Confidentiality.html#document/p1/a275139)

“Therefore, it appears that legislative action would be required to make such information confidential based on security concerns,” Loyzirm said in a letter dated Aug. 2, 2013 (<https://www.documentcloud.org/documents/2703188-Maine-Letter-of-Confidentiality.html#document/p3/a275140>).

The next year, Shaw said a public safety officer from Pan Am approached him at work and raised the issue of keeping some records confidential.

By then, oil shipments through Maine had dropped off sharply, a result of market forces (<http://pinetreewatchdog.org/irving-no-more-oil-trains-in-maine/>), and Pan Am was the only railway moving small amounts of crude through Maine (<http://bangordailynews.com/2015/04/16/business/oil-by-train-shipments-resume-in-maine-after-long-hiatus/>).

“It went under the radar and all of a sudden, it was passed” — David Madore, DEP spokesman

Shaw, who understood the ins and outs of the rail business, liked the idea and submitted a bill.

At a public hearing, Pan Am’s Scarano told the legislature’s Judiciary Committee (<https://www.documentcloud.org/documents/2701521-PanAmTestimony.html#document/p1/a274527>) that state emergency workers were increasingly asking for more details (<https://www.documentcloud.org/documents/2701521-PanAmTestimony.html#document/p1/a275768>) about shipments of hazardous materials and reiterated her point that secrecy would allow her company to “freely share information that will benefit emergency responders and the people of Maine.”

The committee’s research staff sought the advice of the Association of American Railroads (<https://www.documentcloud.org/documents/2701520-AAR-EmailtoReinsch.html>), a Washington, D.C.-based lobby group, according to a review of committee files (<https://www.documentcloud.org/documents/2701541-Committee-File-LD484.html>), but state and federal regulators were never consulted.

“It went under the radar and all of a sudden, it was passed,” said David Madore, a Department of Environmental Protection (DEP) spokesman in December. “It was not something we were involved in.”

The legislation’s only real opposition came from Gov. LePage, who, at the time was issuing vetoes at a record pace and chiding lawmakers (<https://www.documentcloud.org/documents/2704511-LD-1342-Veto-Message.html#document/p1/a275771>) for “hastily passing bills they haven’t even read.”

Yet LePage’s veto of Shaw’s bill (<https://www.documentcloud.org/documents/2678915-Ld-484-Veto-Message.html>) differed from the others.

If first responders have information about hazardous cargo moving in Maine, LePage reasoned, it suggests, at least, the possibility of danger. He added, “I am not at all comfortable shielding this information from the Maine citizens that may be placed in harm’s way by these transports.”

LePage’s veto was overridden in both the House (146-1) and the Senate (31-4).

Right to know?



Photograph: Jeff Pouland

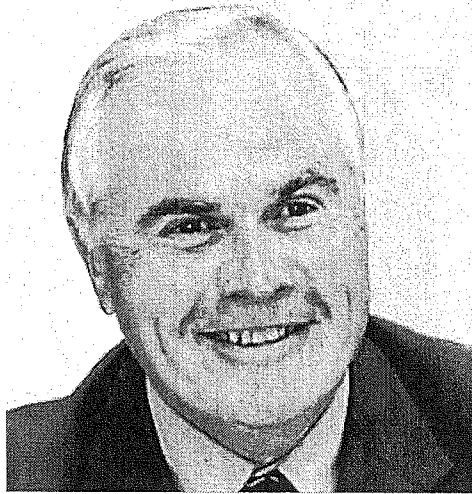
Gov. Paul LePage vetoed the bill. “I am not at all comfortable shielding this information from... Maine citizens.

F.4

Today, Maine residents can no longer know for sure if train cars laden with volatile crude oil are passing through their communities or standing on nearby sidetracks for hours and days at a time.

“Without some information about what railroads are actually doing, how can the public judge whether regulations are protective of human health and the environment?” said Sigmund Schutz, a First Amendment attorney from Portland. “Ultimately, this type of thing undermines people’s confidence in government.”

Some lawmakers and legislative staff, in retrospect, agree the process was flawed.



Contributed photo

State Sen. David Burns, R-Whiting, co-chairman of the Judiciary Committee

Sen. Burns, the Judiciary committee co-chairman, acknowledged lawmakers may not have had all the information they needed. “We saw this as a safety issue, more than an effort to hide things,” said Burns. “If we need to put a change in, we can do that.”

Rep. Barry Hobbins (D-Saco), the committee’s other co-chairman, did not respond to repeated requests for comment.

For his part, Rep. Shaw, who resigned from the legislature in August for personal reasons, says he would encourage his former colleagues to put in “some tweaks” so that some information, like total volumes of crude oil passing through Maine, once again would be made public.

“Keeping them confidential was really never my intention,” said Shaw.

Dave Sherwood is a contributing writer to the Maine Center for Public Interest Reporting, a nonpartisan, non-profit news service based in Augusta. Email: pinetreewatchdog@gmail.com. Web: www.pinetreewatchdog.org (<http://www.pinetreewatchdog.org>).

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Pine Tree Watchdog (<https://pinetreewatchdog.org/dep-to-make-oil-train-data-public-again/>)



Categories

More

DEP to make oil train data public again

By: DAVE SHERWOOD ©MAINE CENTER FOR PUBLIC INTEREST REPORTING | March 2, 2016

AUGUSTA — After nearly five months of silence on the subject, state environmental officials will resume releasing information about the passage of oil trains through Maine.

The change in policy follows consultations with the Attorney General's office on a controversial [law](https://www.documentcloud.org/documents/2703429-Maine-127-HP-323-Item-3.html#document/p1/a275240) (<https://www.documentcloud.org/documents/2703429-Maine-127-HP-323-Item-3.html#document/p1/a275240>), enacted in October, which prevents state and local officials from divulging any information about rail shipments of hazardous materials through Maine.

Before the law took effect, the Department of Environmental Protection had provided summary data on crude oil shipments to the public. Environmental, health and safety advocates supported government transparency, claiming that public awareness of the shipments would enable communities to prepare for or respond to catastrophic events such as the runaway train explosion at Lac-Mégantic, Quebec that killed 47 people in 2013. But the railway industry had argued in Maine and nationally

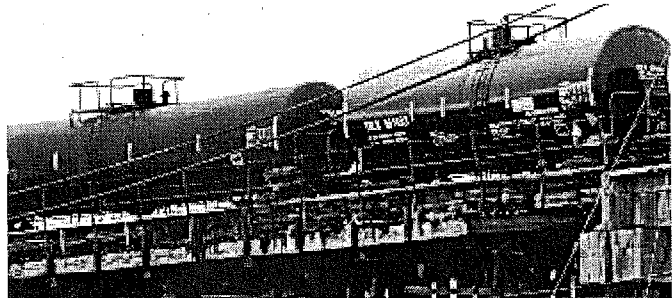


Photo courtesy of Roy Luck. Used under the Creative Commons Attribution 2.0 Generic license. / Wikimedia

The DEP will resume releasing data on oil and other hazardous materials moving on Maine rails.

([https://www.documentcloud.org/documents/2698142-Federal-Register-](https://www.documentcloud.org/documents/2698142-Federal-Register-Oct2014.html#document/p1/a273287)

[Oct2014.html#document/p1/a273287](https://www.documentcloud.org/documents/2698142-Federal-Register-Oct2014.html#document/p1/a273287)) that information about oil and other hazardous materials they carried should be confidential, citing concerns that it could be used to undercut their business or to carry out acts of terrorism.

In February, the Maine Center for Public Interest Reporting filed a request under Maine's open records act to examine the oil data. In response, DEP spokesman David Madore said the Attorney General's office concluded that the law does not prevent his agency from releasing summaries of the monthly crude oil volumes traveling by rail and the companies that transported it.

"We had decided to stop reporting the data until we had a better idea about what was permitted under the new law," Madore said. "We didn't want to go against its spirit or intent."

"It's not surprising they aren't currently shipping crude by rail through Maine. But even if the current amount is zero,

the public has the right to be informed.” — Michelle Fournier of 350Maine

The newly disclosed data shows that no crude oil has passed through Maine in the months since the law went into effect. Irving Oil, which operates Canada’s largest oil refinery in Saint John, New Brunswick, last year said (<http://pinetreewatchdog.org/irving-no-more-oil-trains-in-maine/>) current market conditions favor receiving oil by tanker from overseas rather than by rail.

But environmentalists and open government advocates say market conditions could change anytime.

“It’s not surprising they aren’t currently shipping crude by rail through Maine,” said Michelle Fournier of 350Maine, a climate change advocacy group that has protested oil cargoes in Maine. “But even if the current amount is zero, the public has the right to be informed.”

HAPHAZARD LAWMAKING

The DEP’s decision to release the data also follows an investigation by the Center (<http://pinetreewatchdog.org/legislature-sidestepped-records-law-to-end-public-access-to-oil-train-data/>) that showed lawmakers who approved the bill repeatedly bypassed safeguards designed to prioritize the public’s right-to-know over private business interests (<https://www.documentcloud.org/documents/2699934-FOAA-Statute.html#document/p27/a274576>).



Contributed photo / Bangor Daily News

Former Rep. Mike Shaw, D-Standish, sponsored a 2015 bill that shielded hazardous rail shipments from the public’s right to know.

Former Rep. Mike Shaw, D-Standish, a railroad conductor by trade, had initially argued (<https://www.documentcloud.org/documents/2698135-Testimony24382.html>) the legislation was needed to ensure railroads provided emergency officials with details about hazardous material shipments through Maine.

But the 80-word bill that emerged last year did nothing to make railroads provide information to local first responders. Instead, it only forced the state to keep those details secret from the public when railroads volunteered the data.

The legislation, which created the 460th exception to Maine’s Freedom of Access Act (<https://www.documentcloud.org/documents/2701522-Public-Records-Exceptions-Database-for-RTK.html>), also contradicted the findings of federal regulators. A year earlier, they had determined that information about oil train shipments was “neither security-sensitive nor commercially-sensitive,” according to a notice published in the Federal Register (<https://www.documentcloud.org/documents/2698142-Federal-Register-Oct2014.html#document/p2/a274122>).

The bill nonetheless became law in June 2015 over a sharply worded veto from Gov. Paul LePage (<https://www.documentcloud.org/documents/2678915-Ld-484-Veto-Message.html>).

When presented with these findings in an interview in January, former Rep. Shaw, who resigned from the legislature in August for personal reasons, said he was willing to encourage lawmakers to amend the bill to allow officials to disclose volumes of crude oil moving through Maine.

“Keeping them confidential was really never my intention,” said Shaw.

AGENCY CONFUSION

State environmental officials, rail regulators and the Attorney General’s office all expressed reservations about the bill just days before a public hearing for the legislation, according to emails obtained under the state’s open record act.

But the documents show no action was taken.

Just one day before the public hearing for the bill in April, Erle Townsend, a DEP energy regulation specialist, drafted a letter to lawmakers (<https://www.documentcloud.org/documents/2719557-ErleTownsendEmail.html#document/p3/a279596>) warning of the need to balance the public's right-to-know with security concerns.

"We trust the members of this Committee will consider both of these issues as they evaluate the merits of this legislation," Townsend wrote.

But the letter was never submitted, legislative records show (<https://www.documentcloud.org/documents/2701541-Committee-File-LD484.html>).

Then in May, days before the final vote in the House and Senate, Mary Sauer, an assistant attorney general, once again warned environmental officials (<https://www.documentcloud.org/documents/2719560-MarySauerAG.html#document/p1/a279597>) to seek "clarification from the legislative committee ... to avoid legal arguments and litigation down the road."

Yet regulators never consulted with lawmakers, nor did lawmakers seek out their opinion — a flawed process that the governor, some lawmakers and transparency experts now say needs a second look.

Sigmund Schutz, a First Amendment attorney from Portland, called the reversal good news but said more clarification was needed.

"It's encouraging that they said 'Gee, this slipped through the cracks' and then, 'we have to fix this'," said Schutz. "But we need to be sure there's no ambiguity going forward. It seems there's a real need to amend the legislation to remove any lingering doubt."

Dave Sherwood is a contributing writer to the Maine Center for Public Interest Reporting, a nonpartisan, non-profit news service based in Augusta. See his previous story on Maine's oil trains [here](http://pinetreewatchdog.org/legislature-sidestepped-records-law-to-end-public-access-to-oil-train-data/) (<http://pinetreewatchdog.org/legislature-sidestepped-records-law-to-end-public-access-to-oil-train-data/>). Email: pinetreewatchdog@gmail.com. Web: www.pinetreewatchdog.org.



Sigmund Schutz

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Maine Revised Statutes
Title 1: GENERAL PROVISIONS
Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

§402. DEFINITIONS

1. Conditional approval. Approval of an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.

[1975, c. 758, (NEW) .]

1-A. Legislative subcommittee. "Legislative subcommittee" means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.

[1991, c. 773, §1 (NEW) .]

2. Public proceedings. The term "public proceedings" as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:

A. The Legislature of Maine and its committees and subcommittees; [1975, c. 758, (NEW) .]

B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Community College System and any of its committees and subcommittees; [1989, c. 358, §1 (AMD); 1989, c. 443, §1 (AMD); 1989, c. 878, Pt. A, §1 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; [1991, c. 848, §1 (AMD) .]

D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1995, c. 608, §1 (AMD) .]

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees; [2009, c. 334, §1 (AMD) .]

F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and [2009, c. 334, §2 (AMD) .]

G. The committee meetings, subcommittee meetings and full membership meetings of any association that:

- (1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and
- (2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.

This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach. [2009, c. 334, §3 (NEW) .]

[2009, c. 334, §§1-3 (AMD) .]

3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

A. Records that have been designated confidential by statute; [1975, c. 758, (NEW) .]

B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding; [1975, c. 758, (NEW) .]

C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over; [1991, c. 773, §2 (AMD) .]

C-1. Information contained in a communication between a constituent and an elected official if the information:

(1) Is of a personal nature, consisting of:

(a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(b) Credit or financial information;

(c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;

(d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or

(e) An individual's social security number; or

(2) Would be confidential if it were in the possession of another public agency or official; [2011, c. 264, §1 (NEW) .]

D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives; [1989, c. 358, §4 (AMD) .]

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B; [1989, c. 358, §4 (AMD); 1989, c. 443, §2 (AMD); 1989, c. 878, Pt. A, §2 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1991, c. 448, §1 (AMD) .]

G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1991, c. 448, §1 (AMD) .]

H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct; [1995, c. 608, §4 (AMD) .]

I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter; [1999, c. 96, §1 (AMD) .]

J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization; [2001, c. 675, §1 (AMD) .]

K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A; [2003, c. 392, §1 (AMD) .]

L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure; [2003, c. 614, §1 (AMD) .]

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure, systems and software. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure; [2011, c. 662, §2 (AMD) .]

N. Social security numbers; [2011, c. 320, Pt. E, §1 (AMD) .]

O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:

(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and

(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials; [2009, c. 1, §1 (COR) .]

P. Geographic information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner authorizes the release of the information; [2011, c. 149, §1 (AMD) .]

(Paragraph P as enacted by PL 2009, c. 339, §3 is REALLOCATED TO TITLE 1, SECTION 402, SUBSECTION 3, PARAGRAPH Q)

Q. (REALLOCATED FROM T. 1, §402, sub-§3, ¶P) Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the general public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials or the Department of Corrections under conditions that protect the information from further disclosure; [2015, c. 335, §1 (AMD) .]

R. Social security numbers in the possession of the Secretary of State; [2013, c. 518, §1 (AMD) .]

S. E-mail addresses obtained by a political subdivision of the State for the sole purpose of disseminating noninteractive notifications, updates and cancellations that are issued from the political subdivision or its elected officers to an individual or individuals that request or regularly accept these noninteractive communications; [2015, c. 161, §1 (AMD) .]

T. Records describing research for the development of processing techniques for fisheries, aquaculture and seafood processing or the design and operation of a depuration plant in the possession of the Department of Marine Resources; and [2015, c. 161, §2 (AMD) .]

U. Records provided by a railroad company describing hazardous materials transported by the railroad company in this State, the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes that are in the possession of a state or local emergency management entity or law enforcement agency, a fire department or other first responder. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5. [2015, c. 161, §3 (NEW) .]

[2015, c. 161, §§1-3 (AMD); 2015, c. 335, §1 (AMD) .]

3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:

A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of furlough and dates of furlough; [2013, c. 267, Pt. B, §1 (AMD) .]

B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of residence and dates of supervision; and [2013, c. 267, Pt. B, §1 (AMD) .]

C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information. [2013, c. 267, Pt. B, §1 (AMD) .]

[2013, c. 267, Pt. B, §1 (AMD) .]

4. Public records of interscholastic athletic organizations. Any records or minutes of meetings under subsection 2, paragraph G are public records.

[2009, c. 334, §4 (NEW) .]

5. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.

[2011, c. 662, §3 (NEW) .]

6. Reasonable office hours. "Reasonable office hours" includes all regular office hours of an agency or official.

[2011, c. 662, §3 (NEW) .]

SECTION HISTORY

1973, c. 433, §1 (AMD). 1975, c. 243, (RPR). 1975, c. 483, §2 (AMD).
1975, c. 758, (RPR). 1977, c. 164, §§1,2 (AMD). 1977, c. 696, §9 (AMD).
1985, c. 695, §§1,2 (AMD). 1985, c. 779, §§1,2 (AMD). 1987, c. 20, §1
(AMD). 1987, c. 402, §A1 (AMD). 1987, c. 477, §1 (AMD). 1989, c. 358,
§§1-4 (AMD). 1989, c. 443, §§1,2 (AMD). 1989, c. 878, §§A1,2 (AMD).
1991, c. 448, §§1,2 (AMD). 1991, c. 773, §§1,2 (AMD). 1991, c. 848, §1
(AMD). 1995, c. 608, §§1-5 (AMD). 1997, c. 714, §1 (AMD). 1999, c. 96,
§§1-3 (AMD). 2001, c. 477, §1 (AMD). 2001, c. 675, §§1-3 (AMD). 2003,
c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2003, c. 392, §§1-3 (AMD).
2003, c. 614, §§1-3 (AMD). 2005, c. 381, §§1-3 (AMD). 2007, c. 597, §1
(AMD). RR 2009, c. 1, §§1-3 (COR). 2009, c. 176, §§1-3 (AMD). 2009, c.
334, §§1-4 (AMD). 2009, c. 339, §§1-3 (AMD). 2011, c. 149, §§1-3 (AMD).
2011, c. 264, §1 (AMD). 2011, c. 320, Pt. E, §1 (AMD). 2011, c. 662,
§§2, 3 (AMD). 2013, c. 267, Pt. B, §1 (AMD). 2013, c. 339, §§1-3 (AMD).
2013, c. 518, §§1-3 (AMD). 2015, c. 161, §§1-3 (AMD). 2015, c. 335, §1
(AMD) .

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PUBLIC RECORDS EXCEPTION REVIEW CHECKLIST

Revised 2/13/12

A. Whether the record protected needs to be collected (Conclusion of committee of jurisdiction?)		
B. The value to the agency or official or to the public in maintaining the record (Conclusion of committee of jurisdiction?)		
C. Whether federal law requires the record to be confidential		
Does the proposed exception meet one or more of the following (D, E, F, G or I)		
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in disclosure		
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records		
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records		
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records		
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception		
H. Whether the proposed exception is as narrowly tailored as possible		
<i>If the proposed exception creates broad confidentiality for an entity: 2-A. Accountability review of agency or official.</i> In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.		
2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.		

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H-1

Submitted by DEP
to RTKAC

RTKAC REVIEW RE: LD 484

STATUTE: 1 MRSA §402, sub-§3, ¶ U

RCVD JUL 14 '16

AGENCY: Dept. of Environmental Protection

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
 - Soon after the exemption was passed into law the Department began receiving inquires, estimated at roughly a dozen information requests, from local and national media services. Due to a lack of clarity in the final language of the exemption the DEP's initial response was to exempt the information requested by those entities. During that time the Department consulted with the Attorney General's Office to seek their assistance in clarifying what information was exempted under the new law. A determination was made by the Attorney General's Office which the Department used to response to a FOA request for information on January 4th, 2016. The request was made by David Sherwood, Maine Center for Public Interest Reporting, for information detailing total volumes, by month and carrier, of crude and other petroleum products traversing Maine's railroads during the months of October, November and December of 2015. It was determined that the requested information did not meet the requirements of the exemption because it was after the date of transport, therefore the information was provided to the reporter.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
 - The Department would support reducing the scope of the exemptions to reflect the original intent of the bill, which according to testimony provided by Representative Shaw, was to increase safety. The current exemption references a list of hazardous materials defined by 49 CFR 172.101. This exemption represents over 200 pages of Hazardous materials. The additional burden reviewing this list to see which materials are exempt and the limited information that is provided to the Department prior to transport provides no increase in safety for the citizens of Maine. The Department also seeks to clarify the exact information that is exempted by the law.

RTKAC REVIEW RE: LD 484

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
 - Some of the information provided to the Department is used to calculate fees for the transportation of petroleum products. A summary report, attached to this document, is provided each month but contains only limited information which the Department in consultation with the Attorney General's Office deemed not covered by the exemption. The current language lacks clarity on many issues such as which agencies are included in the exemption, how long the information is protected and is information collected for other purposes included in the exemption (DEP spill reports).

4. Does your agency recommend changes to this exception?
 - The Department would recommend reviewing the exemption as currently written. The initial concern was with the transportation of crude oil because of the incident in Lac-Megantic, Canada (No crude oil has been transported by rail in Maine since February 2015). It appears that the current law has gone well beyond that. The Department would also like to have clarified exactly what information is covered by the exemption and how the information may be provided in a summary format that does not provide information about routes and frequency. The Department needs clarification on whether information collected by DEP from a railroad as a result of a discharge of oil or hazardous materials is covered by the exemption.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
 - Railroads, environmental groups and media outlets.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
 - The Department is concerned that the exemption may give citizens the misconception that rail cargo information is readily available to the Department, which it is not. As currently written the law states that information "in the possession of a state or local emergency management entity or law enforcement agency, fire department or first responder. There is some question as to whether the Department of Environmental Protection is included in this list and if so does the exemption include information that our first responders collect.

Barrels of Crude by Month

2013

All Crude	Reg #	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Total 2013
Portland Pipeline	306	4,663,561	5,231,611	5,128,650	3,859,630	4,312,763	4,955,119	4,528,148	5,400,081	5,177,393	3,073,453	4,624,764	1,820,151	52,775,324
Maine Central Railroad	903	441,820	312,583	385,566	NR	NR	NR	NR	NR	0	70,484	0	0	1,210,453
Montreal, Maine & Atlantic	914	489,687	501,294	484,614	519,971	347,721	512,132	179,094	0	0	0	0	0	3,034,514
Total Crude 2013														57,020,291

2014

All Crude	Reg #	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Total 2014
Portland Pipeline	306	4,215,328	2,030,814	4,219,484	2,426,495	680,909	2,504,744	2,525,136	3,588,942	2,212,664	2,824,336	2,500,968	2,880,175	32,609,995
Maine Central Railroad	903	0	0	15,545	0	0	0	0	0	0	0	0	0	15,545
Montreal, Maine & Atlantic	914	0	0	0	0	0	0	0	0	0	0	0	0	0
Central Maine & Quebec	919	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Crude 2014														32,625,540

2015

All Crude	Reg #	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Total 2015
Portland Pipeline	306	3,239,312	1,665,980	2,851,096	3,359,043	1,544,625	1,497,568	1,458,392	2,372,185	593,926	742,312	2,227,453	602,537	22,154,429
Maine Central Railroad	903	0	37,128	0	0	0	0	0	0	0	0	0	0	37,128
Central Maine & Quebec	919	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Crude 2015														22,191,557

2016

All Crude	Reg #	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Total 2016
Portland Pipeline	306	0	0	0	0	0	0	0	0	0	0	0	0	0
Maine Central Railroad	903	0	0	0	0	0	0	0	0	0	0	0	0	0
Central Maine & Quebec	919	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Crude 2016														0

BACKGROUND INFORMATION:
TREATMENT OF PERSONAL CONTACT INFORMATION FOR PROFESSIONS AND
OCCUPATIONS LICENSED BY THE STATE

I. LD 1499 materials:

- A. Letter to RTKAC from Judiciary Committee outlining request to consider issue
- B. Public Law 2015, chapter 476 (effective 7/29/16);
- C. Governor's veto letter (veto overridden 4/15/16);
- D. Original bill and Committee amendment; and
- E. Written testimony submitted at public hearing

II. Professions and Occupations Licensed by the State of Maine:

- A. Outline of professions and occupations licensed/registered
- B. Sample license application—contact information requested (social worker; nursing)
- C. Frequently Asked Questions document provided to applicants and licensees

III. Maine Laws Providing for Confidentiality of Personal Contact Information for Applicants or Professional Licenses:

- A. Emergency medical services (32 MRSA §§ 90-B & 91-B)
- B. Nursing (32 MRSA §2109)
- C. Osteopathic medicine (32 MRSA §2600-A)
- D. Medicine (32 MRSA §3300-A)
- E. Social workers (32 MRSA §7032)
- F. Professional investigators (32 MRSA §8124)
- G. Securities (32 MRSA §16607 designating residential addresses and telephone numbers used as business addresses or telephone numbers as “not public records”)
- H. *Also 32 MRSA §9418 related to private security guards which seems to designate information related to a private security guard collected by the Commissioner of Public Safety as confidential but also allows for the Commissioner to provide a list of names and current addresses of security guards employed by licensed companies upon specific request.

SENATE

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AMY F. VOLK, DISTRICT 30
CHRISTOPHER K. JOHNSON, DISTRICT 13

MARGARET J. REINSCH, SENIOR LEGISLATIVE ANALYST
HENRY D. FOUTS, LEGISLATIVE ANALYST
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THEODORE BEAR MITCHELL I, PENOBSCOT NATION

STATE OF MAINE
ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
COMMITTEE ON JUDICIARY

April 15, 2016

Senator David C. Burns, Chair
Representative Kimberly J. Monaghan, Co-Chair
Members
Right to Know Advisory Committee

Re: State regulation of professions and occupations: personal contact information

Dear Right to Know Advisory Committee Members:

During the Second Regular Session of the 127th Legislature, the Judiciary Committee heard, worked and reported out LD 1499, An Act to Increase the Safety of Social Workers, sponsored by Representative Goode. The bill originally proposed to designate as confidential the home address of licensed social workers held by the State Board of Social Worker Licensure. The purpose is to ensure that social workers and their families cannot be tracked down and endangered at home by emotionally distraught clients or others the social workers come into contact with professionally. The Judiciary Committee has sympathy for those concerns.

The Judiciary Committee also recognizes that the State regulates professions and occupations in the interest of public safety and welfare. Professional and Financial Regulation Commissioner Anne Head provided the following testimony.

State regulation of a profession or occupation is a public process. Licensing board meetings are open to the public, adjudicatory hearing proceedings are open to the public, and information submitted by applicants seeking state licenses is in the public domain. A license application and information contained within an application – with one exception – is considered a “public record” under Title 1, section 402. The only item of information required on a license application that is confidential is an applicant’s social security number pursuant to Title 1, section 402(3)(N).

The notice to applicants on every application form includes the sentence, “Names, license numbers and mailing addresses listed on or submitted as part of this application will be available to the public and may be posted on our website.”

A few licensing entities other than those boards that are part of the Department of Professional and Financial Regulation do provide confidentiality for personal contact information of their licensees, including the Emergency Medical Services Board, the Board of Licensure in Medicine, the Board of Osteopathic Licensure, the State Board of Nursing and the Department of Public Safety as it licenses professional investigators.

The Judiciary Committee ended up reporting out the bill as amended, replacing the proposed text with language designating the address and telephone number of an applicant as well as a licensee under the Social Worker chapter as confidential when in the possession of the licensing board. It specifically provides that the board and its staff may use and disclose the address and telephone number as necessary to perform the duties and functions of the board.

The Judiciary Committee would like to see a uniform policy for the treatment of personal contact information for professions and occupations regulated by the State. We are therefore requesting that the Right to Know Advisory Committee take up this topic and try to develop comprehensive recommendations that can be applied to all professions and occupations, balancing the protection of privacy with the public interest in an open and transparent regulatory process, a regulatory process whose underlying purpose is the protection of the health, safety and welfare of the public. In the case of social workers, their privacy interest includes the need to manage their risk in a profession that can present danger because of the nature of their work; this is a concern that may apply in several professions and occupations. Commissioner Head has agreed to work with the Advisory Committee to provide the Department's input in discussions and formulations of appropriate requirements. The Judiciary Committee will be happy to share all files and correspondence on this bill.

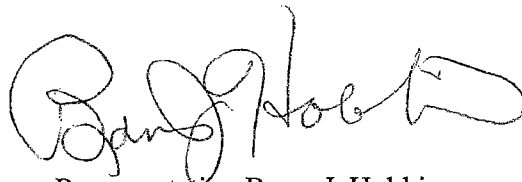
Please feel free to contact us or our committee analyst if you have any questions.

Thank you.

Sincerely,



Senator David C. Burns
Senator Chair



Representative Barry J. Hobbins
House Chair

Attachment: Committee Amendment to LD 1499

c: Commissioner Anne Head, DPFR
Lori Gramlich, NASW Maine Chapter

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
H.P. 1022 - L.D. 1499

An Act To Increase the Safety of Social Workers

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA §7032 is enacted to read:

§7032. Addresses confidential

The address and telephone number of an applicant for licensure or a person licensed under this chapter that are in the possession of the board are confidential. Nothing in this section prohibits the board and its staff from using and disclosing the address and telephone number of an applicant or licensee as necessary to perform the duties and functions of the board.



STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

Paul R. LePage
GOVERNOR

12 April 2016

The 127th Legislature of the State of Maine
State House
Augusta, ME

Dear Honorable Members of the 127th Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 1499, "An Act To Increase the Safety of Social Workers."

This bill would remove from the public record the addresses and phone numbers of licensed social workers in Maine. It would carve out a special exemption, leaving dozens of other professions and occupations licensed under Title 32 without this consideration.


The original purpose of making licensee contact information public was to support the role of the state and the licensing boards in ensuring that licensees are accountable to the public. If a social worker fears for his or her safety, he or she may provide a Post Office box number to the Department of Professional and Financial Regulation or take advantage of the Secretary of State's alternative address program.

The purpose of publicizing contact information is not to ensure that anybody may glean a social worker's home address, but that the public is able to contact that social worker or other licensee directly with complaints, requests or other relevant communications. There are countless legitimate reasons members of the public may have for trying to contact a licensed social worker. They should not be deprived of that ability lightly or unnecessarily.

Furthermore, if somebody really wants to find a licensee in the internet age, they will do so. Making previously public information confidential for the purposes of a state website will only make legitimate contact more difficult while serving merely as a speed bump to anyone with ill intent.

For these reasons, I return LD 1499 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,


Paul R. LePage
Governor



PRINTED ON RECYCLED PAPER

I.C-1



127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1499

H.P. 1022

House of Representatives, December 23, 2015

An Act To Increase the Safety of Social Workers

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 21, 2015. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative GOODE of Bangor.
Cosponsored by Senator KATZ of Kennebec and
Representatives: BEEBE-CENTER of Rockland, CHENETTE of Saco, GATTINE of
Westbrook, GIDEON of Freeport, HOBBS of Saco, McCREIGHT of Harpswell, WARREN
of Hallowell, Senator: PATRICK of Oxford.

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Date: 3/25/16

L.D. 1499
(Filing No. H-605)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1022, L.D. 1499, Bill, "An Act To Increase the Safety of Social Workers"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 32 MRSA §7032 is enacted to read:

§7032. Addresses confidential

The address and telephone number of an applicant for licensure or a person licensed under this chapter that are in the possession of the board are confidential. Nothing in this section prohibits the board and its staff from using and disclosing the address and telephone number of an applicant or licensee as necessary to perform the duties and functions of the board.'

SUMMARY

This amendment replaces the bill. This amendment specifies that the addresses and telephone numbers of applicants for licensure as well as of licensed social workers are confidential; the bill provides that only the home addresses of licensed social workers are confidential. The amendment also revises the language in the bill regarding confidentiality to be consistent with other references to confidential information in the Maine Revised Statutes. The amendment specifies that the confidentiality provision does not prohibit the Department of Professional and Financial Regulation, State Board of Social Worker Licensure from using and disclosing the addresses and telephone numbers of applicants or licensees as necessary to perform the duties and functions of the board.

FISCAL NOTE REQUIRED
(See Attached)

COMMITTEE AMENDMENT

ID-3



Approved: 03/17/16 *MAC*

127th MAINE LEGISLATURE

LD 1499

LR 2422(02)

An Act To Increase the Safety of Social Workers

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-605)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Additional costs to the State Board of Social Worker Licensure, Office of Professional and Occupation Regulation, Department of Professional and Financial Regulation to implement the requirements of this legislation can be absorbed within existing budgeted resources.

D-4



HOUSE OF REPRESENTATIVES

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February 16, 2016

Testimony of Rep. Adam Goode

LD 1499, An Act to Increase the Safety of Social Workers

Before the Joint Standing Committee on Judiciary

Good afternoon Senator Burns, Representative Hobbins and members of the Judiciary Committee. I am Adam Goode and I represent House District 127. I am proud to present **LD 1499, An Act to Increase the Safety of Social Workers**.

This bill seeks to improve the safety and privacy of social workers who hold a license from the Department of Professional and Financial Regulation. The statute changes in this legislation seek to ensure that the home address of a social worker is confidential and not open to the public.

The National Association of Social Workers has issued guidelines noting that the clients' social workers serve may pose safety threats. It is unfortunate, but true, that social workers practice in settings that are increasingly unpredictable or unsafe. This had led to some social workers becoming permanently injured or losing their lives. This concern for safety is brought into the community and poses challenges to the personal lives of social workers if their home addresses are made available over the internet.

The goal of this legislation is to minimize the likelihood of social workers being exposed to harassment from former clients. Having home addresses of social workers accessible on the licensing board's website makes it easier to invite harassment, intimidation, loss of privacy and assault from an individual who may be emotionally unstable.

An additional concern related to this legislation relates to FOIA policy in this area. Suppressing personal street addresses or contact information on the internet would serve as a positive step forward. That alone does not prevent a person from requesting specific information from the social work licensing board. Changes in FOIA policy could help address such requests.

If the committee is interested in tackling this problem, I would recommend exploring the possibility of having an opt-in or opt-out component of the application for licensure.

There is an interest in keeping social workers safe. I submitted this legislation because keeping personal information of professional social workers private, if chosen, can be a tool to increase safety and better serve the public. I look forward to your work on the bill and encourage you to vote "ought to pass".

District 15 Bangor (part)

Printed on recycled paper

I, E1

February 16, 2016

TO: Joint Standing Committee on Judiciary
FROM: Lori K. Gramlich, LMSW, Executive Director Maine Chapter National Association of Social Workers
REGARDING: LD 1499 An Act Increase the Safety of Social Workers

Good Afternoon, Sen. Burns, Rep. Hobbins and esteemed members of the Judiciary Committee.

My name is Lori Gramlich, and I am the Executive Director of the Maine Chapter of the National Association of Social Workers. Founded in 1955 the National Association of Social Workers (NASW) is the largest organization of professional social workers in the world, with over 150,000 members in fifty-six chapters nationwide and internationally. Our Maine Chapter has approximately 1,000 members and is the major professional social work organization in the state. We are committed to advancing professional social work practice and to promoting human rights, social and economic justice, and unimpeded access to services for everyone. Part of NASW's mission is to promote, develop, and protect the practice of social work and social workers.

I am here today in support of LD 1499.

Every day social workers across this country and certainly in the State of Maine provide a wide range of services in increasingly complex environments including community mental health centers, family service agencies, private practice, child welfare services, K-12 schools, universities, hospitals, homeless shelters, nursing homes, domestic violence shelters, rape crisis centers, courts, prisons, and in a variety of other public and private agencies. Professional social workers address an array of societal issues including but not limited to mental illness, substance abuse, and other issues relating to social injustice. We are in fact the largest group of mental health service providers.

Presently there are at approximately 175 licensed social workers employed by the Department of Health and Human Services. Many of these professionals provide services in some of our most contentious situations, namely child protective services. There are hundreds more Licensed Clinical Social Workers who provide behavioral health services either in mental health organizations or in their own private practice.

Safety is a concern in most if not all of these settings. Social workers are often engaging in risky situations on behalf of their clients. Unfortunately, too many social workers have been the targets of verbal and physical assaults and some have even tragically lost their lives while performing their job responsibilities.

Concerns related to the safety of social workers are brought to the attention of the public each time social worker is killed "in the line of duty." Sadly, this was the case this past August, for a social worker in Vermont, who lost

her life after a contested child protective custody issue. This is a critical issue to the National Association of Social Workers and its 55 chapters.

NASW regularly receives calls from social workers expressing alarm about being harassed by former clients or sometimes the abusive spouse or parent of a client. Recently, a social worker expressed a feeling of real danger because a violent, abusive parent of a client was threatening her and stalking her home.

In recognition of these concerns, states which have previously made social workers' home addresses public are reversing themselves. For instance, in West Virginia and Missouri, their social work licensing board changed their policy following reports of health care workers who were attacked by patients who became aware of their home addresses. Additionally, 14 State Boards of Social Work Licensure, (Louisiana, West Virginia, California, Wisconsin, Idaho, Oregon, Texas, Iowa, Tennessee, Wyoming, North Carolina, Massachusetts and Montana) as a matter of practice DO NOT publish the home addresses of social workers on their public web page. Many other states are exploring this issue as well.

The goal of this legislation is to minimize the likelihood of social workers being exposed to harassment and potential life threatening abuse from current or former clients. Having home addresses of social workers accessible on the licensing board's website makes it easier to invite harassment, intimidation, loss of privacy and assault from an individual who may be emotionally unstable.

Currently, when searching if an individual is licensed to practice social work in the state of Maine, a list of all licensed social workers can be accessed – this list contains over 5,500 individuals. One can simply click on the hyperlink of that individual's name and their private information, including home address and phone number appear on the web page.

In conversations with the Department of Professional and Financial Regulation, Commissioner Anne Head informed me that the Department would be willing to suppress the home addresses of social workers from their public accessible web page. While this seems reasonable in the Certified Nursing Assistants, for example do not have their private information listed, we see this as a good first step.

With regard to the FOIA aspect of this legislation, and as Representative Goode identified, we would be very interested in exploring an option whereby social workers could opt out of having their private information shared under the Freedom of Information Act.

We look forward to our continued working relationship with the Department of Professional and Financial Regulation and the Social Work Licensing Board.

I would be happy to try to answer any questions for you and will make myself available for the work session. Thank you for your time and consideration.

I.E-3



Position in Support of LD 1499
"An Act to Increase the Safety of Social Workers"

Individuals who elect to build a career in human or mental health services are often required to hold a license issued by the State of Maine. As licensed professionals, their home addresses are often publically available in connection to the licensure information. Mental health and human service professions have higher percentages of women than men; with the social work profession estimated to be about 70-80% female. Given the high number of women in the field, and their work with challenging populations, the public accessibility of home addresses creates an unnecessary safety risk. NAMI Maine strongly supports enhancing the protections afforded to individuals licensed in the field of mental health and human services as outlined in LD 1499. The safety of individuals who choose to serve in these honorable professions is paramount.

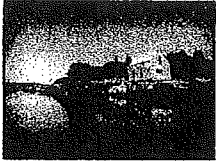
The vast majority of individuals who utilize mental health or human service professionals present no risk to those who provide the service. However, it is currently too easy for an unhappy parent in a child welfare case or a counseling client with inappropriate transference to find the home address of the professional involved. The state should not be facilitating access to this level of personal information and increasing the vulnerability of mental health and human service professionals. If there is a need to list a method of contact, an email address is a significantly safer option.

While NAMI Maine strongly supports the intent of this bill, we cannot support it as drafted. Without an amendment that recognizes the need to protect the home addresses of not only LSWs, LCSWs, and LMSWs, but also professionals such as: licensed clinical professional counselors (LCPC); LCPC (conditional); licensed marriage and family counselors; licensed drug and alcohol counselors; and psychologists, NAMI Maine would need to oppose the legislation as it only serves to protect a percentage of those delivering services. While social workers have a very strong trade association (NASW), the protection afforded to social workers should be extended to all licensed individuals involved in the delivery of mental health or human services.

Jenna Mehnert, MSW, Executive Director
jenna@namimaine.org | (800) 464-5767 ext. 2313

NAMI Maine is the state's largest grassroots, mental health advocacy organization. Sustained by seven affiliates and thousands of supporters across the state, NAMI Maine is an active voice for the families, individuals and professionals whose daily lives are impacted by mental illness. For more information about our programs, visit www.namimaine.org.

E4



Loren Andrews
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**Testimony before the
Joint Standing Committee on Judiciary
of the 127th Legislature**

L.D. 1499, An Act To Increase the Safety of Social Workers

Loren Andrews, MA, MSW, LCSW
National Association of Social Workers, Maine Chapter
February 16, 2016

Senator Burns, Representative Hobbins, and members of the Committee on Judiciary, good afternoon. My name is Loren Andrews, I am a Licensed Clinical Social Worker in private practice in Rockland, and I am Chair of the Legislative Action Committee for the Maine Chapter of National Association of Social Workers. Thank you for accepting my testimony in favor of L.D. 1499, *An Act To Increase the Safety of Social Workers*.

Social workers have many roles and many different jobs in our state, from child protection, to working intensively with families, to case management, to psychotherapy. In every instance, there are measures of risks involved. One never knows from one hour to the next if a client might be angry or even violent. It's a reality of our clinical world, and we take it on strongly and confidently.

But in this professional context, we need to know that our homes are safe environments. We need to know that possibly violent clients cannot track us down there, cannot call us there, and cannot stop by. This is especially true when we have spouses, partners, and children involved. Let me restate this: this level of safety is especially true when we have spouses, partners, and children involved. The very thought that my professional role could bring harm to my family brings pause to me every time.

This bill represents a simple change to law governing social work licensure and the public listing of our home address. It simply takes away the ability for the licensing board to list our home address. But it provides us an enormous degree of safety and comfort to know that our home environments are safe, and that we

have sanctuary for sometimes difficult and challenging client populations.

Please know that it is rare for a social worker to feel in danger by a client or insecure of their safety. But in those rare moments when it happens, this simple change will provide generations of caring, competent, and dedicated social workers a measure of safety they certainly deserve.

In closing, I urge you to give your full support to L.D. 1499, *An Act To Increase the Safety of Social Workers*. Your support will not only create a sense of safety for hundreds of dedicated professionals in our state, it may literally save lives. Thank you for your consideration of this important legislation.

Good Afternoon Senator Burns, Representative Hobbins and Honorable Members of the Judiciary Committee.

My name is April Turner and I am from Freedom, ME. I am a senior at the University of Maine, in the Social Work Program. I am a member of the Nation Association of Social Workers. In addition to being a social work student and a NASW member, I am a mother by birth, adoption, and foster care. I work as a Youth and Family Counselor at a children's Crisis Unit and as a Visitation Supervision Worker for families with children in foster care.

I am here today to testify in support of LD 1499 **An Act To Increase the safety of Social Workers**. For Safety and privacy reasons it is important that the home addresses of social workers not be made public.

As a mother I am concerned that my family could be placed in danger because a client that I work with could obtain my home address. As a foster parent that concern grows even greater since I am expected to provide a safe home for a child that has already experienced trauma. Publishing my address will not only put me at risk, it also puts my husband and four children in my home at risk.

Today I am choosing to share my concerns with you because I am setting an example for my children. I lecture and preach to them, to ensure that they are being safe with their identities and information. How could I sit back and not protect my own? I have accepted that once I become a social worker there is a possibility of harm and harassment when I am at my workplace or in the

field. And, I wear no blinders when it comes to the expectations for the work ahead of me. An NASW report, Guidelines for Social Worker Safety in the Workplace states, “Unfortunately, the number and variety of people to whom social workers provide services and the variety of settings in which these services are provided have contributed to an increasingly unpredictable, and often unsafe, environment for social work practice. Social workers have been the targets of [client] verbal and physical assaults Tragically, some social workers have also been permanently injured or have lost their lives” These concerns can carry over into the community if the home addresses of social workers are made available.

According to the National Bureau of Labor and Statistics Maine has 4,050 Social Workers. As I previously mentioned I am from Freedom- putting 4,050 social workers at risk is the same as putting all of the residents of Freedom, Knox, Montville, Thorndike, and Jackson at risk. This is far beyond what I know you want to do. I ask that you don't put Maine's Social Workers at risk. Allowing our home addresses to be published serves no benefit to our clients and only puts social workers at risk.

Thank you. I would be happy to answer any questions that any of you might wish to ask me.

References:

Anastas, J. W., PhD, LMSW, Clark, E. J., PhD, ACSW, MPH, Domingo, B., Hickman, S. A., ACSW, LCSW, Munch, S., PhD, LCSW, Newhill, C. E., LCSW, . . . Omari, K., LMSW-C&M, ACSW. (2013). Guidelines for Social Worker Safety in the Workplace. Retrieved February 15, 2015, from <https://www.socialworkers.org/practice/naswstandards/safetystandards2013.pdf>



Paul R. LePage
Governor

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
35 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0035

Anne L. Head
Commissioner

TESTIMONY OF ANNE L. HEAD

COMMISSIONER, DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

NEITHER FOR NOR AGAINST

LD 1499

“An Act To Increase the Safety of Social Workers”

Sponsored by Representative Adam Goode

BEFORE THE JOINT STANDING COMMITTEE ON JUDICIARY

Public Hearing: February 16, 2016

Senator Burns, Representative Hobbins and members of the Committee, my name is Anne Head. I serve as Commissioner of the Department of Professional and Financial Regulation and Director of its Office of Professional and Occupational Regulation. The Department takes no position on this bill but wishes to provide information about the professional licensing application process that may be helpful during committee deliberations on this matter.

Office of Professional and Occupational Regulation

The Office of Professional and Occupational Regulation is responsible for administering thirty-seven individual state licensing programs and serves over 110,000 licensees. LD 1499 provides that the “home address” of one group of licensees--licensed social workers-- in the possession of the Office should be designated confidential by law and not accessible by the public.

State regulation of a profession or occupation is a public process. Licensing board meetings are open to the public, adjudicatory hearing proceedings are open to the public, and information submitted by applicants seeking state licenses is in the public domain. A license application and the information contained within an application--with one exception--is considered a “public record” under Title 1 § 402. The only item of information required on a license application that is confidential is an applicant’s social security number pursuant to Title 1, sec. 402 (3)(N). The following notice to applicants is on every application form:

PUBLIC RECORD: This application is a public record for purposes of the Maine Freedom of Access Law (1 MRSA §401 et seq). Public records must be made available to any person upon request. This application for licensure is a public record and information supplied as part of the application (other than social security number and credit card information) is public information. Other licensing records to which this information may later be transferred will also be considered public records. Names, license numbers and mailing addresses listed on or submitted as part of this application will be available to the public and may be posted on our website.

OFFICES LOCATED AT: 76 NORTHERN AVENUE, GARDINER, MAINE

PHONE: (207)624-8511 (VOICE)

TTY users: call Maine Relay 711

FAX: (207)624-8595

EA

Purpose of Collecting Licensee Address

License application forms used by the Office of Professional and Occupational Regulation require applicants to provide a mailing address. A mailing address may be a professional or business address, a post office box, a home address or any address where the applicant or licensee can receive communications from the Department about a licensing matter. We do not inquire of an applicant what type of address the applicant has submitted. The mailing address simply provides a mechanism by which the Department can contact a licensee by mail in the event that such contact is necessary. The Department does not ask for a home address or a residential address, nor does it ever identify an address supplied by a licensee as a home address. I've attached a document called "Frequently Asked Questions" that consistently refers to a "contact" address to be supplied by licensees.

Use of Available Technology

Public policy underlying the aspect of this public process is the use of information technology to maximize public access to public records. Title 1 § 414 entitled PUBLIC RECORDS; INFORMATION TECHNOLOGY provides:

An agency shall consider, in the purchase of and contracting for computer software and other information technology resources, the extent to which the software or technology will:

1. **Maximize public access.** Maximize public access to public records; and
2. **Maximize exportability; protect confidential information.** Maximize the exportability of public records while protecting confidential information that may be part of public records.

The Office of Professional and Occupational Regulation has complied with this provision by using technology to inform the public about all non-confidential aspects of the licensing process through its technology resources. The Office receives many requests each year for rosters of licensee names and addresses for use by professional and trade associations, and other governmental agencies within and outside the state for valid business purposes. In order to make use of available technology, businesses and members of the public can access and download those rosters at no cost. For example, organizations that sponsor or offer continuing education courses and programs frequently use this on-line feature to publicize their offerings. This information is also accessed for many valid business purposes. Making addresses of any type confidential by law would preclude this use of public information.

Issues that require the balancing of the public's right to know with an individual's right to privacy are always difficult and require careful deliberation. The Department stands ready to work with the bill's proponents and the Committee if the Committee intends to make changes in this area of state law.

Thank you for the opportunity to comment. I'd be happy to answer questions now or at the work session.

Attachment—Frequently Asked Questions about Professional Licensing Process

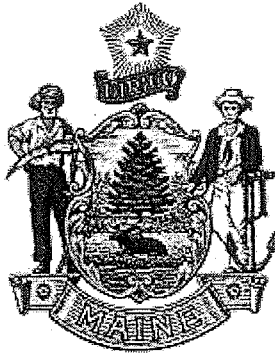
Outline of Professions and Occupations Licensed/Registered in Maine

State Agency	Profession/Occupation
Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation	OLOR administers 37 licensing programs—29 are overseen by independent licensing boards; 8 are administered directly by OLOR Accountants, Acupuncturists, Alcohol and Drug Counselors, Architects, Athletic Trainers, Auctioneers, Audiologists, Barbers, Boiler Inspectors, Boiler Operators, Charitable Solicitations, Chiropractors, Complementary Health Care Providers, Cosmetologists, Counselors, Dietetic Technicians, Dietitians, Elevator Inspectors and Mechanics, Foresters, Funeral Practitioners, Geologists, Hearing Aid Dealers and Fitters, Interior Designers, Interpreters for the Deaf, Land Surveyors, Landscape Architects, Manufactured Housing Professionals, Massage Therapists, Naturopathic Doctors, Nursing Home Administrators, Occupational Therapy Assistants, Occupational Therapists, Physical Therapists, Plumbers, Podiatrists, Propane & Natural Gas Technicians, Professional Solicitors, Psychologists, Radiologic Technologists, Real Estate Appraisers, Real Estate Professionals, Respiratory Care Practitioners, Social Workers, Soil Scientists, Speech-Language Pathologists, Stationary Steam Engineers
DPFR, Office of Securities	Broker-dealers, investment advisers and investment adviser representatives
DPFR, Bureau of Insurance	Insurance producers (agents), consultants, adjusters
Board of Licensure in Medicine	Physicians (MDs), physician assistants
Board of Dental Examiners	Dentists, dental hygienists, dental assistants, denturists, dental radiographers
Board of Osteopathic Licensure	Osteopathic physicians (DOs)
State Board of Nursing	Professional registered nurses, practical nurses, advanced practice registered nurses, nurse practitioners
State Board of Optometry	Optometrists
State Board of Registration for Professional Engineers	Professional engineers
Department of Public Safety	Private investigators, private security guards, polygraph examiners
Department of Health and Human Services	Certified nursing assistants, direct care workers (Direct Care Worker Registry), radon service providers

STATE OF MAINE

BOARD OF SOCIAL WORKER LICENSURE

APPLICATION FOR LICENSED SOCIAL WORKER (LS)



Department of Professional and Financial Regulation
Office of Licensing and Registration
35 State House Station
Augusta, ME 04333-0035

Office Telephone: (207) 624-8674
Office Facsimile: (207) 624-8637
TTY/HEARING IMPAIRED (888) 577-6690
E Internet: www.maine.gov/professionallicensing

Office located at: 76 Northern Avenue, Gardiner, Maine

Revised 2/2011

B-1

APPLICANT INFORMATION GUIDE

The application material you have requested from the Board of Social Worker Licensure is enclosed. It contains all the relevant materials you need to complete your application for licensure as a Social Worker in the State of Maine. Please read all the information carefully. If you have any questions after reading this packet, please call or e-mail our office.

FURNISHED TO APPLICANT

- Application Guide for Licensure as a Social Worker
- Individual License Application
- Verification of Consultation Form
- Verification of Licensure Form

ADDITIONAL RESOURCES

- ASWB Social Work Licensing Examination Candidate Handbook
Available: <http://www.aswb.org/handbook.pdf> or call (207) 624-8674

- Licensing Law for Social Workers

Please read carefully and review periodically for changes. You are responsible for knowing and complying with all Maine Laws throughout your licensure.

Available: <http://www.mainelegislature.org/legis/statutes/32/title32ch83sec0.html> or call (207) 624-8674

- Licensing Rules for Social Workers

Please read carefully and review periodically for changes. You are responsible for knowing and complying with all Board Rules throughout your licensure.

Available: <http://www.maine.gov/sos/cec/rules/02/chaps02.htm#416> or call (207) 624-8674

- National Association of Social Workers (NASW) Code of Ethics

Available: <http://www.naswdc.org/pubs/code/> or call 1-800-638-8799 ext. 238

- Statutory Authority, Titles 5 & 10

Available: <http://www.mainelegislature.org/legis/statutes/10/title10ch901sec0.html>

<http://www.mainelegislature.org/legis/statutes/5/title5ch341sec0.html>

APPLICATION PROCEDURE:

- Please submit your application materials by mail or hand delivery to our offices. Fax submissions will not be accepted. If the application you submit to us is complete, it will be reviewed and processed in the order it was received.
- If there are deficiencies with your application, you will be notified by mail. **Please note:** Candidates whose applications have been incomplete for more than one (1) year will be required to submit new applications if they still wish to be considered for licensure.
- Please do not call our office regarding the status of your application. Information about the status of applications may be found at the Office of Licensing & Registration's website: http://www.maine.gov/professionallicensing/license_search.htm. We appreciate your thoughtful attention to this request.

CONTINUING EDUCATION

Continuing education is required for the renewal of a license. A minimum of twenty-five (25) contact hours of continuing education must be completed within the two-year licensing cycle. Four (4) of the twenty-five (25) hours must be related to social work ethics. LSW-Conditional licensees licensed on or after January 1, 2004 must complete six (6) hours of ethics and six (6) hours of psychosocial assessment. Please be sure to review the Rules, Chapter 14 for more information or for possible changes to continuing education requirements.

DESCRIPTION:

A "Licensed Social Worker" (LSW) is a person who has received a license as a Social Worker from the Board. A LSW may:

- Conduct basic data gathering of records and specific life issues of individuals, groups, couples and families;
- Assess the above data, formulate and implement a plan to achieve specific goals related to specific life issues;
- Serve as an advocate for clients or groups of clients for the purpose of achieving specific goals relating to specific life issues;
- Refer clients to other professional services;
- Plan, manage, direct or coordinate social services;
- Participate in the training and education of social work students; and
- Supervise other LSWs, other professionals practicing related professions and paraprofessionals engaged in related activities.

LSWs cannot engage in private/independent social work practice.

If applying for LSW Licensure and you have a Bachelor of Social Work (BSW) or Social Welfare degree from a Council on Social Work Education (CSWE) accredited program, you must submit:

- A completed and signed Application;
- Official Transcript of an earned Bachelor of Social Work (BSW) degree from a Council on Social Work Education (CSWE) accredited program;
- Request for Examination (Bachelors) or Official documentation of successful passage of the required examination (Bachelors);
- Three (3) current (dated within the past year) letters of professional recommendation, two (2) of which must be from licensed social workers (at any level of licensure from any state);
- A completed Agreement to Provide Consultation Form;
- Payment of a non-refundable \$25.00 Application fee;
- Payment of a Licensure fee of \$70.00; and
- Payment of a non-refundable Criminal History Check fee of \$21.00.

Note: All fees can be in one payment.

For applicants currently licensed in another state:

If you are currently licensed in another state and are applying for licensure in Maine, you must submit the following **in addition** to the items mentioned above:

- A copy of the state laws and rules under which the applicant is licensed;
- A copy of the applicant's social work license; and
- A completed Verification of Licensure Form.

If applying for LSW Licensure and you are currently licensed as a LSW Conditional and you have completed 96 hours of consultation concurrent with 3200 hours of social work employment occurring in not less than two (2) nor more than four (4) years you must submit:

- Completed and signed Application;
- A completed Verification of Consultation Form documenting completion of 96 hours of consultation concurrent with 3200 hours of social work employment occurring in not less than two (2) nor more than four (4) years;
- Request for Examination (Basic/Bachelors) or Official documentation of successful passage of the required examination (Basic/Bachelors)
- Official Transcript if not already on file with the Board;
- Three (3) current (dated within the past year) letters of professional recommendation, two (2) of which must be from licensed social workers (at any level of licensure from any state);
- Agreement to Provide Consultation Form;
- Payment of a non-refundable \$25.00 Application fee;
- Payment of a Licensure fee of \$70.00; and
- Payment of a non-refundable Criminal History Check fee of \$21.00.

Note: All fees can be in one payment.

STATE OF MAINE DEPARTMENT OF PROFESSIONAL & FINANCIAL REGULATION - OFFICE OF LICENSING & REGISTRATION
Mailing Address: 35 State House Station, Augusta, Maine 04333 Courier/Delivery address: 76 Northern Avenue, Gardiner, Maine 04345
Phone: (207) 624-8603 Fax: (207) 624-8637 Hearing Impaired: (888) 577-6690 Web: www.maine.gov/professionallicensing

H. B-5

Frequently Asked Questions:

- **Where do I send my application?** Our mailing address is 35 State House Station, Augusta, Maine 04333-0035.
- **Where are you located?** 76 Northern Avenue, Gardiner, Maine.
- **What hours are you open?** 8:00 a.m. to 5:00 p.m. weekdays.
- **Can I come to Gardiner to drop off my application?** Yes. You will not leave with a license, though.
- **Can I come to Gardiner to pick up my license?** No. Your license will be mailed to you.
- **How can I check the status of my application?** You can check our website: www.maine.gov/professionallicensing/license_search.htm.
- **How far back do I go answering the criminal conviction question?** Any conviction, ever.
- **Can I fax my application?** No.

NOTICES

BACKGROUND CHECK: Pursuant to 5 M.R.S.A. §5301 - 5303, the State of Maine is granted the authority to take into consideration an applicant's criminal history record. The Office of Licensing and Registration requires a criminal history records check as part of the application process for all applicants.

PUBLIC RECORD: This application is a public record for purposes of the Maine Freedom of Access Law (1 MRSA §401 et seq). Public records must be made available to any person upon request. This application for licensure is a public record and information supplied as part of the application (other than social security number and credit card information) is public information. Other licensing records to which this information may later be transferred will also be considered public records. Names, license numbers and mailing addresses listed on or submitted as part of this application will be available to the public and may be posted on our website.

SOCIAL SECURITY NUMBER: The following statement is made pursuant to the Privacy Act of 1974 (§7(B)). Disclosure of your Social Security Number is mandatory. Solicitation of your Social Security Number is solely for tax administration purposes, pursuant to 35 MRSA §175 as authorized by the Tax Reform Act of 1975 (42 USC §405(C)(2)(C)(1)). Your Social Security Number will be disclosed to the State Tax Assessor or an authorized agent for use in determining filing obligations and tax liability pursuant to Title 36 of the Maine Revised Statutes. No further use will be made of your Social Security Number and it shall be treated as confidential tax information pursuant to 36 MRSA §191.

Before you seal the envelope, did you:

- Complete every item on the application including the criminal background disclosure question.
- Sign and date your application.
- Include the required fee(s). Make checks payable to "Maine State Treasurer" or complete the credit card section on the application. DO NOT SEND CASH.
- Make a copy of your application to keep for your records.



**STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
OFFICE OF LICENSING AND REGISTRATION
INDIVIDUAL LICENSE APPLICATION**

APPLICANT INFORMATION (please print)			
FULL LEGAL NAME			
ANY OTHER NAMES EVER USED			
DATE OF BIRTH	/	/	SOCIAL SECURITY NUMBER
MAILING ADDRESS			
CITY	STATE	ZIP CODE	COUNTY
PHONE ()	FAX ()	E-MAIL	

CRIMINAL BACKGROUND DISCLOSURE	
<i>NOTE: Failure to disclose criminal convictions may result in denial, fines, suspension and/or revocation of a license.</i>	
1. Have you ever been convicted by any court of any crime? (circle one)	NO YES
If yes, enclose a detailed description of what happened (including dates) and a copy of the court judgment.	
2. Has any jurisdiction taken disciplinary action against any professional license you hold or have held, or denied your application for licensure? (circle one)	NO YES
If yes, enclose a detailed explanation and copies of all documents.	
By my signature, I hereby certify that the information provided on this application is true and accurate to the best of my knowledge and belief. By submitting this application, I affirm that the Office of Licensing and Registration will rely upon this information for issuance of my license and that this information is truthful and factual. I also understand that sanctions may be imposed including denial, fines, suspension or revocation of my license if this information is found to be false.	
SIGNATURE	DATE

Board of Social Worker Licensure	
Please Select License Type: <input type="checkbox"/> Licensed Social Worker (LS1421)	Office Use Only: 1421 - \$70.00 1446 - \$25.00 2619 - \$21.00
Required Fee: \$116 (includes Criminal History Records Check Fee)	Office Use Only: Check # _____ Amount: _____ Cash # _____ Lic. # _____
Rev. 2/2011	

PAYMENT OPTIONS:	
Make checks payable to "Maine State Treasurer" - If you wish to pay by Mastercard or Visa, fill out the following:	
NAME OF CARDHOLDER (please print)	
I authorize the Dept. of Professional and Financial Regulation, Office of Licensing and Registration to charge my	
<input type="checkbox"/> VISA <input type="checkbox"/> MASTERCARD	the following amount: \$ _____
Card number: _____	Expiration Date / / _____
SIGNATURE	DATE

II-B-7

Undergraduate Education

Name of Academic Institution:

Mailing Address:

City:

State:

Zip Code:

Major:

Degree Granted:

Date Conferred:

Credentialing History

Have you ever held a professional license/certification/registration in this or any other state/country? [] YES [] NO

If yes:

Profession	License #	State/Country	Date Issued	Expiration Date

Have you ever taken a social work examination? [] YES [] NO

If yes:

Which Exam & Level?	Where?	Date Taken:

Disciplinary History

1. Do you have pending against you any complaints from a regulatory board or professional organization? If yes, please enclose a detailed explanation. [] YES [] NO

2. Have you ever been or are you currently a defendant in a civil proceeding related to your professional activities? If yes, please enclose a detailed explanation. [] YES [] NO

Affirmation

By my signature, I hereby certify that the information provided on this application is true and accurate to the best of my knowledge and belief. By submitting this application, I affirm that the Office of Licensing and Registration will rely upon this information for issuance of my license and that this information is truthful and factual. I also understand that sanctions may be imposed including denial, fines, suspension or revocation of my license if this information is found to be false.

SIGNATURE: _____ DATE: _____

STATE BOARD OF
NURSING APPLICATION

PUBLIC RECORD: This application is a public record for purposes of the Maine Freedom of Access Law (1 MRSA §401 et seq). Public records must be made available to any person upon request. This application for licensure is a public record and information supplied as part of the application (other than social security number and credit card information) is public information. Other licensing records to which this information may later be transferred will also be considered public records. Names, license numbers and mailing addresses listed on or submitted as part of this application will be available to the public and may be posted on our website. The mailing address is considered your public contact address.



MAINE STATE BOARD OF NURSING

161 Capitol Street • 158 State House Station
Augusta, Maine 04333-0158
(207) 287-1133

APPLICATION FOR EXAMINATION AND LICENSE AS A REGISTERED PROFESSIONAL NURSE

DO NOT WRITE IN THIS SPACE

Application Approved by Board of Nursing:

Application Received _____

Fee: CC Cash Check MO _____

Examination Date _____

Re-examination Date(s) _____

LICENSE NUMBER _____ License Date _____

Chair

Executive Director

Date

INSTRUCTIONS

An applicant must submit to the Board of Nursing office the following:

1. application form completed in ink or typewritten and properly notarized with signature in applicant's handwriting, and
2. fee of \$75 in the form of Visa/Mastercard, U.S. check or money order in U.S. funds, made payable to the Treasurer of State of Maine, and
3. recent passport type photograph (2x2 and not more than two years old), signed and dated, and enclosed with the application form and
4. transcripts (for out of state programs only)

It is imperative that you supply us with your entire name, including any and all previously used names. If you do not have middle, maiden, or previous names, then you must write NONE in the appropriate space.

THE APPLICATION FEE IS NOT REFUNDABLE

SECTION I. PROFILE INFORMATION

Print legal name _____
(first) (full middle) (maiden) (last)

List any other names used previously _____

Mailing address* (street) _____

*This is considered your public contact address.

(city) (county) (state and zip code)

Residential address (if different from above) _____

Telephone Number(s) _____
(home) (mobile) (business)

Email address _____ Social Security #: _____

Birthplace _____ Date of Birth _____
(city/state) (month/day/year)

High School _____
(name and location)

Date of Graduation _____ G.E.D. YES NO Date of G.E.D. Diploma _____

SECTION II. BASIC NURSING EDUCATION

School of Professional Nursing _____
(name)

(address)

Date of Entrance _____ Date of Graduation _____ Length of Program* _____

**If program is less than 2 years, please give details on a separate piece of paper (i.e. if you have a previous degree)*

Diploma Associate Baccalaureate Masters Doctoral Certificate

Have you ever been licensed as a practical nurse? YES NO

If YES, indicate state(s), date(s), of licensure and license number(s).

SECTION III. TO BE COMPLETED BY ADMINISTRATIVE OFFICER OF SCHOOL OF NURSING

I hereby certify that _____ has successfully completed the prescribed
(applicant's name)

nursing education program on _____ and will graduate on _____
(month/day/year) (month/day/year)

(signature)

SCHOOL SEAL

(title)

SECTION IV. EXAMINATION HISTORY

Have you ever taken an examination for registered nurse licensure?

YES NO
If YES, indicate state(s) and date(s).

SECTION V. DISCIPLINARY INFORMATION

- A. Has any licensing authority refused to issue you a license or ever revoked, annulled, cancelled, accepted surrender of, suspended, placed on probation, refused to renew a professional license, certificate or multi-state privilege held by you now or previously, or ever fined, censured, reprimanded or otherwise disciplined you? YES NO
- B. Is there any complaint pending against your license in any state or jurisdiction? YES NO
- C. Have you ever been disciplined for problems resulting from a physical illness or condition? YES NO
- D. Have you ever been disciplined for problems resulting from mental illness? YES NO
- E. Within the past five (5) years have you been addicted to and/or treated for the use of alcohol or any other drug? YES NO

- F. Have you ever been disciplined for problems resulting from chemical dependency? YES NO
- G. For any criminal offense, including those pending appeal, have you: *(please circle below all that apply)* YES NO
- a. Been convicted of a misdemeanor?
 - b. Been convicted of a felony?
 - c. Pled nolo contendere, no contest, or guilty?
 - d. Received deferred adjudication?
 - e. Been place on community supervision or court-ordered probation, whether or not adjudicated guilty?
 - f. Been sentenced to serve jail or prison time? court ordered confinement?
 - g. Been granted pre-trial diversion?
 - h. Been arrested or have any pending criminal charges?
 - i. Been cited or charge with any violation of the law? *(other than parking tickets and/or other traffic violations)*
 - j. Been subject of a court-martial; Article 15 violation; or received any form of military judgment/punishment/action?
- H. Are you currently the target or subject of a grand jury or governmental agency investigation? YES NO

NOTE: If you answered "YES" to questions A-G listed above, attach a letter of explanation that is dated and signed indicating the circumstance you are reporting to the Board. If you answered "YES" to questions G or H, you must also attach the document(s) showing the disposition of the case(s).

SECTION VI: DECLARATION OF LEGAL RESIDENCE

- A. I declare that the State of _____ is my primary state of residence as of _____ (date) and that such constitutes my permanent and principal home for legal purposes. ("Primary state of residence" is defined as the state of a person's declared fixed permanent and principal home for legal purposes; domicile.)
- B. Upon licensure in Maine, in which state(s) do you intend to practice?
- C. Are you currently employed in the U.S. Military (Active Duty) or the U.S. Federal Government? YES NO

TAPE TOP ONLY

one recent photograph

Sign back of photo and indicate year taken

Photo must be:

- Full face view
- Passport type

← 2 x 2 only →

Clear and recognizable likeness

I, the undersigned, being duly sworn, say that I am the person referred to in this application for licensure in the State of Maine, that the statements contained herein and on all attachments are true and correct in every respect, that I have complied with all requirements of the law, and that I have read and understand this affidavit.

Signature of Applicant _____

Sworn to before me this _____ day of _____, 20 _____

Notary Public _____

(SEAL)

My commission expires _____ in and for the State of _____

Professional and Financial Regulation

Home → Professional Licensing → OPOP Applicant/Licensee FAQ's

OPOP Applicant/Licensee FAQs

1. **Application Disclosure/Process**
2. **Online Renewals**
3. **Other Questions**

Application Disclosure/Process:

Why do I need to provide my social security number?

Solicitation of your Social Security Number is solely for tax administration purposes, pursuant to 36 MRS §175 as authorized by the Tax Reform Act of 1975 (42 USC §405 (C)(2)(C)(i)). Your social security number will be disclosed to the State Tax Assessor or an authorized agent for use in determining filing obligations and tax liability and shall be treated as confidential tax information pursuant to 36 MRS §191.

Is my application confidential?

No. This application is a public record for purposes of the Maine Freedom of Access Law (1 MRS §401 et seq.). Public records must be made available to any person upon request. This application for licensure is a public record and information supplied as part of the application, other than social security number and credit card information, is public information.

Why is a background check (criminal history records check) done?

Pursuant to 5 MRS §5301-5303, the State of Maine has authority to consider an applicant's criminal history record in determining eligibility for licensure. The Office of Professional and Occupational Regulation requires a Maine State Bureau of Identification criminal history record check as part of the application process for all applicants.

Do I need to let the Office know that I have a new address and name?

10 MRS §8003-G, applicants and licensees are required to report in writing to the Board the following information no later than ten (10) days after the change or event, as the case may be:

1. Change of name or address of the licensee;
2. A criminal conviction of the licensee or anyone listed on this application as having an ownership interest in the licensee;
3. A revocation, suspension, or other disciplinary action taken in this or any other jurisdiction against any occupational or professional license held by the

applicant/licensee or anyone listed on this application as having an ownership interest in the licensee; or

4. Any material change in the conditions or qualifications set forth in the original application for licensure submitted to the Board.

How long does the application process take?

Applications are processed in the order in which they are received. Processing times do vary depending on the volume of applications being received and the type of license for which you are applying. You may check the status of your application by clicking on the link listed below:

[Check Application Status](#)

If I personally deliver my application and required fee to the Office, can you review and act on my application while I wait?

No. Your application will be reviewed and acted on in the order received.

When will I receive my new license?

Once your license has been approved and activated your license will be emailed to you. You may practice as soon as your license has been approved and activated. You may check the status of your license by clicking on the link listed below:

[Check Application Status](#)

Can I pick up my license once issued?

No, your license will be emailed to you.

What address should I use for a courier package delivery service, such as FedEx or UPS Overnight?

All courier delivery packages should be sent to the physical location of the office. The physical address is:

Office of Professional and Occupational Regulation
76 Northern Avenue
Gardiner, ME 04345

I do not want to overnight my packet. I'm going to send my application packet using the United States Postal Service (USPS). What address should I use?

The mailing address for the office is:

Office of Professional and Occupational Regulation
35 State House Station
Augusta, ME 04333

Online Renewal:

When am I eligible to renew my license?

All licenses may be renewed sixty (60) days prior to the expiration date. For example,

II.C-2

a license that expires on March 31st may be renewed on or after January 31st and a license that expires on June 18th may be renewed on or after April 20th.

Can I renew my license over the phone?

No. The office is not authorized to take any payment information over the phone. Also, renewal applications contain questions which must be answered at the time of renewal.

How do I get to the online renewal site?

Please click on the link below and follow the instructions:

www.maine.gov/online/pfrrenewal

Why can't I get the system to work?

First verify that you have chosen the correct regulator (licensing program). Then verify that you are entering your full license number, including the 2-3 letter prefix, and that you are using the correct access code.

I forgot my access code, what can I do?

Please click the link below and follow the instructions:

www.maine.gov/online/pfrrenewal

I think someone may have stolen my access code. How can I get a new code?

Please click on the link below to send an email to board staff to request a new access code be issued:

[OPOR Email list](#)

When will I receive my new license?

Once your license has been approved and activated your license will be emailed to you. You may practice as soon as your license has been approved and activated. You may check the status of your license by clicking on the link listed below:

[Check Application Status](#)

Why do I keep getting an error message saying the website cannot be found?

Please type the website address (www.maine.gov/online/pfrrenewal) directly in the address line.

Please note going through a search engine, such as Google, Yahoo or MSN Search, will return no results or re-direct you to a different website not affiliated with the agency

Other Questions:**Can I update my contact information online?**

Contact addresses, phone numbers and email addresses can be updated on-line. Name changes must be submitted in writing to the office. Please click on the link below and

II.C-3

follow instructions to update contact information other than a name change:

Update Contact Information

How do I submit a name change to the Office?

Please click on the link below to contact the board for instructions on how to update your name.

Board email addresses

How can I get a verification of my Maine license?

Licensees can download a pdf verification of licensure, free of charge, on our website.

Verify a License

You may also send a letter/request including your name, license number, mailing address, and payment of \$25.00 for a manually produced license verification. The difference between the free online license verification and the manually prepared verification is an embossed State seal. Please send the request to:

Office of Professional and Occupational Regulation

35 State House Station

Augusta, ME 04333

Please note: Checks/money orders may be made payable to "Treasurer, State of Maine" or you may submit a credit card authorization form.

How do I get to the Office of Professional and Occupational Regulation ("OPOR")?

Please click on link below for directions:

<http://www.maine.gov/pfr/professionallicensing/directions.html>

What are the hours of operation?

The office is open from 8:00 a.m. to 5:00 p.m. Monday through Friday. The office is closed on bank holiday(s); for a complete listing of holiday closures please click on the link below

http://www.maine.gov/bhr/employee_center/holiday.htm

How do I find other Maine state offices on the web?

Please visit the website listed below for a full listing of other state agencies:

<http://www.maine.gov/portal/government/agencies.html>

Can't find the answer to your question(s)? Click prof.lic@maine.gov to send us an email.

II.C.4

Maine Revised Statutes

Title 32: PROFESSIONS AND OCCUPATIONS

Chapter 2-B: MAINE EMERGENCY MEDICAL SERVICES ACT OF 1982

§90-B. ADDRESS OF APPLICANT

Beginning on January 1, 2012, an applicant for a license or renewal of a license under this chapter shall provide the board with: [2011, c. 271, §18 (NEW).]

1. Public record address. A contact address, telephone number and e-mail address that the applicant is willing to have treated as a public record, such as a business address, business telephone number and business e-mail address; and

[2011, c. 271, §18 (NEW) .]

2. Personal address. The applicant's personal residence address, personal telephone number and personal e-mail address.

[2011, c. 271, §18 (NEW) .]

If the applicant is willing to have the applicant's personal residence address and telephone number and personal e-mail address treated as public records, the applicant shall indicate that in the application and is not required to submit a different address under subsection 1. [2011, c. 271, §18 (NEW) .]

SECTION HISTORY

2011, c. 271, §18 (NEW) .

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Maine Revised Statutes

Title 32: PROFESSIONS AND OCCUPATIONS

Chapter 2-B: MAINE EMERGENCY MEDICAL SERVICES ACT OF 1982

§91-B. CONFIDENTIALITY EXCEPTIONS

1. **Confidentiality.** Except as otherwise provided in this chapter, all proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the board and all reports, information and records provided to the committee are confidential and may not be disclosed or obtained by discovery from the committee, the board or its staff. Quality assurance information may be disclosed to a licensee as part of any board-approved educational or corrective process. All complaints and investigative records of the board or any committee or subcommittee of the board are confidential during the pendency of an investigation and may not be disclosed by the committee, the board or its staff. Information or records that identify or permit identification of any patient that appears in any reports, information or records provided to the board or department for the purposes of investigation are confidential and may not be disclosed by the committee, the board or its staff.

A. A personal residence address, personal telephone number or personal e-mail address submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as permitted under this section or as otherwise required by law unless the applicant who submitted the information indicated pursuant to section 90-B that the applicant is willing to have the applicant's personal residence address, personal telephone number or personal e-mail address treated as a public record. Personal health information submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as otherwise permitted under this section or otherwise required by law.

The board and its committees and staff may disclose personal health information about and the personal residence address and personal telephone number of a licensee or an applicant for a license under this chapter to a government licensing or disciplinary authority or to a health care provider located within or outside this State that requests the information for the purposes of granting, limiting or denying a license or employment to the applicant or licensee. [2011, c. 271, §19 (NEW) .]

B. Any materials or information submitted to the board in support of an application that are designated as confidential by any other provision of law remain confidential in the possession of the board. Information in any report or record provided to the board pursuant to this chapter that permits identification of a person receiving emergency medical treatment is confidential. [2011, c. 271, §19 (NEW) .]

C. Information provided to the board under section 87-B is confidential if the information identifies or permits the identification of a trauma patient or a member of that patient's family. [2011, c. 271, §19 (NEW) .]

D. Examination questions used by the board to fulfill the cognitive testing requirements of this chapter are confidential. [2011, c. 271, §19 (NEW) .]

[2011, c. 271, §19 (NEW) .]

2. **Exceptions.** Information designated confidential under subsection 1 becomes a public record or may be released as provided in this subsection.

A. Confidential information may be released in an adjudicatory hearing or informal conference before the board or in any subsequent formal proceeding to which the confidential information is relevant. [2011, c. 271, §19 (NEW) .]

B. Confidential information may be released in a consent agreement or other written settlement when the confidential information constitutes or pertains to the basis of board action. [2011, c. 271, §19 (NEW) .]

C. Investigative records and complaints become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this paragraph, an investigation is concluded when:

- (1) Notice of an adjudicatory proceeding, as defined under Title 5, chapter 375, subchapter 1, has been issued;
- (2) A consent agreement has been executed; or
- (3) A letter of dismissal has been issued or the investigation has otherwise been closed. [2011, c. 271, §19 (NEW) .]

D. During the pendency of an investigation, a complaint or investigative record may be disclosed:

- (1) To Maine Emergency Medical Services employees designated by the director;
- (2) To designated complaint officers of the board;
- (3) By a Maine Emergency Medical Services employee or complaint officer designated by the board to the extent considered necessary to facilitate the investigation;
- (4) To other state or federal agencies when the files contain evidence of possible violations of laws enforced by those agencies;
- (5) By the director, to the extent the director determines such disclosure necessary to avoid imminent and serious harm. The authority of the director to make such a disclosure may not be delegated;
- (6) When it is determined, in accordance with rules adopted by the department, that confidentiality is no longer warranted due to general public knowledge of the circumstances surrounding the complaint or investigation and when the investigation would not be prejudiced by the disclosure; or
- (7) To the person investigated on request of that person. The director may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the director determines that disclosure would prejudice the investigation. The authority of the director to make such a determination may not be delegated. [2011, c. 271, §19 (NEW) .]

E. Data collected by Maine Emergency Medical Services that allows identification of persons receiving emergency medical treatment may be released for purposes of research, public health surveillance and linkage with patient electronic medical records if the release is approved by the board, the Medical Direction and Practices Board and the director. Information that specifically identifies individuals must be removed from the information disclosed pursuant to this paragraph, unless the board, the Medical Direction and Practices Board and the director determine that the release of such information is necessary for the purposes of the research, public health surveillance or linkage with patient electronic medical records. [2015, c. 82, §8 (AMD) .]

F. Confidential information may be released in accordance with an order issued on a finding of good cause by a court of competent jurisdiction. [2011, c. 271, §19 (NEW) .]

G. Confidential information may be released to the Office of the Chief Medical Examiner within the Office of the Attorney General. [2011, c. 271, §19 (NEW) .]

[2015, c. 82, §8 (AMD) .]

3. Violation. A person who intentionally violates this section commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

[2011, c. 271, §19 (NEW) .]

SECTION HISTORY

2011, c. 271, §19 (NEW) . 2015, c. 82, §8 (AMD) .

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Maine Revised Statutes
Title 32: PROFESSIONS AND OCCUPATIONS
Chapter 31: NURSES AND NURSING

§2109. CONFIDENTIALITY OF PERSONAL INFORMATION OF APPLICANT OR LICENSEE

For applications for licensure and for renewal of licensure submitted on or after July 1, 2004, an applicant or licensee shall provide the board with a current professional address and telephone number, which is the public contact address, and a personal residence address and telephone number. An applicant's or licensee's personal residence address and telephone number, and e-mail address if provided by the applicant, are confidential information and may not be disclosed except as permitted by this section or as required by law unless the personal residence address, telephone number and e-mail address have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted or required by law. [2003, c. 64, §1 (NEW) .]

SECTION HISTORY

2003, c. 64, §1 (NEW) .

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Maine Revised Statutes
Title 32: PROFESSIONS AND OCCUPATIONS
Chapter 36: OSTEOPATHIC PHYSICIANS

§2600-A. CONFIDENTIALITY OF PERSONAL INFORMATION OF APPLICANT OR LICENSEE

An applicant or licensee shall provide the board with a current professional address and telephone number, which will be their public contact address, and a personal residence address and telephone number. An applicant's or licensee's personal residence address and telephone number is confidential information and may not be disclosed except as permitted by this section or as required by law, unless the personal residence address and telephone number have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted by this section or as required by law. The personal health information and personal residence address and telephone number may be provided to other governmental licensing or disciplinary authorities or to any health care providers located within or outside this State that are concerned with granting, limiting or denying a physician's employment or privileges. [2001, c. 214, §1 (NEW) .]

SECTION HISTORY
2001, c. 214, §1 (NEW) .

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Maine Revised Statutes
Title 32: PROFESSIONS AND OCCUPATIONS
Chapter 48: BOARD OF LICENSURE IN MEDICINE
HEADING: PL 1993, c. 600, Pt. A, §197 (rpr)

§3300-A. CONFIDENTIALITY OF PERSONAL INFORMATION OF APPLICANT OR LICENSEE

An applicant or licensee shall provide the board with a current professional address and telephone number, which will be their public contact address, and a personal residence address and telephone number. An applicant's or licensee's personal residence address and telephone number is confidential information and may not be disclosed except as permitted by this section or as required by law, unless the personal residence address and telephone number have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted by this section or as required by law. The personal health information and personal residence address and telephone number may be provided to other governmental licensing or disciplinary authorities or to any health care providers located within or outside this State that are concerned with granting, limiting or denying a physician's employment or privileges. [2001, c. 214, §2 (NEW) .]

SECTION HISTORY

2001, c. 214, §2 (NEW) .

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Effective July 29, 2016

GOVERNOR'S
VETO
OVERRIDDEN

CHAPTER

476

APRIL 15, 2016

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

H.P. 1022 - L.D. 1499

An Act To Increase the Safety of Social Workers

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA §7032 is enacted to read:

§7032. Addresses confidential

The address and telephone number of an applicant for licensure or a person licensed under this chapter that are in the possession of the board are confidential. Nothing in this section prohibits the board and its staff from using and disclosing the address and telephone number of an applicant or licensee as necessary to perform the duties and functions of the board.

Maine Revised Statutes
Title 32: PROFESSIONS AND OCCUPATIONS
Chapter 89: PROFESSIONAL INVESTIGATORS

§8124. CONFIDENTIAL INFORMATION

The home address and home telephone number of a professional investigator or investigative assistant obtained by the State under this chapter are confidential and may not be disclosed by the board except by written consent of the subject of the information, by court order, for criminal justice purposes or for permitting purposes by law enforcement agencies or permitting authorities. [2015, c. 295, §1 (NEW) .]

SECTION HISTORY

2015, c. 295, §1 (NEW) .

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Maine Revised Statutes

Title 32: PROFESSIONS AND OCCUPATIONS

Chapter 135: MAINE UNIFORM SECURITIES

ACT HEADING: PL 2005, c. 65, Pt. A, §2 (new)

§16607. PUBLIC RECORDS; CONFIDENTIALITY

1. **Presumption of public records.** Except as otherwise provided in subsection 2, records obtained by the administrator or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing or report, are public records and are available for public examination in accordance with Title 1, chapter 13, subchapter 1.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Nonpublic records.** The following records are not public records and are not available for public examination under subsection 1:

A. A record obtained by the administrator in connection with an audit or inspection under section 16411, subsection 4 or an investigation under section 16602; [2005, c. 65, Pt. A, §2 (NEW) .]

B. A part of a record filed in connection with a registration statement under section 16301 and sections 16303 to 16305 or a record under section 16411, subsection 4 that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law; [2005, c. 65, Pt. A, §2 (NEW) .]

C. A record that is not required to be provided to the administrator or filed under this chapter and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure; [2005, c. 65, Pt. A, §2 (NEW) .]

D. A record received from a person specified in section 16608, subsection 1 that has been designated as confidential by the agency furnishing the record; [2005, c. 65, Pt. A, §2 (NEW) .]

E. Any social security number, residential address unless used as a business address and residential telephone number unless used as a business telephone number contained in a record that is filed; [2005, c. 65, Pt. A, §2 (NEW) .]

F. A record obtained by the administrator through a designee of the administrator that, pursuant to a routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A, or an order under this chapter, has been:

(1) Expunged from the administrator's records by the designee; or

(2) Determined to be nonpublic or nondisclosable by that designee if the administrator finds the determination to be in the public interest and for the protection of investors; [2005, c. 65, Pt. A, §2 (NEW) .]

G. Records to the extent that they relate solely to the administrator's internal personnel rules and practices, including, but not limited to, protocols, guidelines, manuals and memoranda of procedure for employees of the Office of Securities; [2005, c. 65, Pt. A, §2 (NEW) .]

H. Interagency or intra-agency memoranda or letters, including generally records that reflect discussions between or consideration by the administrator and employees of the Office of Securities of any action taken or proposed to be taken by the administrator or employees of the Office of Securities, including, but not limited to, reports, summaries, analyses, conclusions or other work product of the administrator or employees of the Office of Securities, except those that by law would routinely be discoverable in litigation; and [2005, c. 65, Pt. A, §2 (NEW) .]

I. Records to the extent that disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. [2005, c. 65, Pt. A, §2 (NEW) .]

[2005, c. 65, Pt. A, §2 (NEW) .]

3. Administrator discretion to disclose. If disclosure is for the purpose of a civil, administrative or criminal investigation, action or proceeding or to a person specified in section 16608, subsection 1, the administrator may disclose a record obtained in connection with an audit or inspection under section 16411, subsection 4 or a record obtained in connection with an investigation under section 16602. Prior to disclosure to a person specified in section 16608, subsection 1, the administrator may require the requesting agency to certify that under applicable law reasonable protections exist to preserve the integrity, confidentiality and security of the information comparable to the protections existing under the laws of this State.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. Public disclosure for enforcement purposes. The administrator may disclose to the public any information obtained in connection with an investigation that would otherwise be nonpublic information, but only if the administrator determines that disclosure is necessary for the protection of investors or the public.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY

2005, c. 65, §A2 (NEW) .

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Maine Revised Statutes
Title 32: PROFESSIONS AND OCCUPATIONS
Chapter 93: PRIVATE SECURITY GUARDS

§9418. CONFIDENTIALITY OF APPLICATION AND INFORMATION COLLECTED BY THE COMMISSIONER

Notwithstanding Title 1, chapter 13, subchapter 1, all applications for a license to be a contract security company and any documents made a part of the application, refusals and any information of record collected by the commissioner during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 9405 and 9411-A, and all information of record collected by the commissioner during the process of ascertaining whether a natural person meets the requirements of section 9410-A, are confidential and may not be made available for public inspection or copying. The applicant or natural person may waive this confidentiality by written notice to the commissioner. All proceedings relating to the issuance of a license to be a contract security company are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant. [2011, c. 662, §20 (AMD).]

The commissioner or his designee shall make a permanent record of each license to be a contract security company in a suitable book or file kept for that purpose. The record shall include a copy of the license and shall be available for public inspection. Upon a specific request, the commissioner or his designee shall provide a list of names and current addresses of security guards employed by licensed contract security companies. [1987, c. 170, §19 (NEW).]

SECTION HISTORY

1987, c. 170, §19 (NEW). 2011, c. 662, §20 (AMD).

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July 18, 2016

VIA EMAIL AND FIRST-CLASS MAIL

Sen. David C. Burns, Chair
Right to Know Advisory Committee
Maine State Senate
3 State House Station
Augusta, ME 04333

Rep. Kimberly J. Monaghan
Right to Know Advisory Committee
Maine House of Representatives
2 State House Station
Augusta, ME 04333

RE: Your Letter of June 24, 2016

Dear Sen. Burns and Rep. Monaghan:

I am responding on behalf of the *Portland Press Herald/Maine Sunday Telegram* to your letter of June 24, 2016 concerning the upcoming meeting of the Right to Know Advisory Committee.

Your letter suggests that the Committee will not be holding a public hearing regarding the conduct of the Maine Warden Service in response to the *Press Herald's* November 2, 2015 request for communications between members of the Warden Service and personnel with the North Woods Law television program. Nonetheless, I previously copied the Committee on the *Press Herald's* July 1, 2016 letter to the Warden Service. That letter outlines the *Press Herald's* position that the Warden Service did not provide a complete or timely response, at reasonable cost, to a straightforward request for public correspondence between state employees and an entertainment company.

Your letter asks the *Press Herald* to suggest changes to improve the public records law based on its recent experience with the Warden Service. As a news organization, the *Press Herald* does not engage in lobbying. If the Committee focuses only on changes in the law, however, it may overlook related but no less important issues of compliance and enforcement. Are state agencies complying with the law now on the books? Is the law adequately enforced? The newspaper's fundamental concern is simple: it wants public records to be public, and it wants them promptly when asked for.

PRETI FLAHERTY

Sen. David C. Burns, Chair
Rep. Kimberly J. Monaghan
July 18, 2016
Page 2

Although we appreciate your request and acknowledge that the Committee is charged with considering changes in the law, it would be unwise for the newspaper to start to engage in legislative advocacy now. Thank you for contacting us about this important matter.

Very truly yours,



Sigmund D. Schutz

SDS:jac

cc: Henry Fouts (*via email*)
Craig Nale (*via email*)
Colleen McCarthy Reid (*via email*)
Cliff Schectman (*via email*)
Steve Greenlee (*via email*)
Colin Woodard (*via email*)



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF
INLAND FISHERIES & WILDLIFE
284 STATE STREET
41 STATE HOUSE STATION
AUGUSTA, ME 04333-0041
TEL: 207-287-8000

CHANDLER E. WOODCOCK
COMMISSIONER

July 15, 2016

Sigmund D. Schutz, Esq.
Preti, Flaherty, Beliveau and Pachios, LLP
One City Center
P.O. Box 9546
Portland, Maine 04112-9546

Dear Attorney Schutz:

This is in response to your July 1, 2016 letter to Denise M. Brann, AAG Mark Randlett and AAG Brenda Kiely regarding the Department of Inland Fisheries and Wildlife's ("IFW") response to the FOAA request from the Portland Press Herald/Maine Sunday Telegram ("PPH") for records relating to correspondence between members of the Warden Service and the production company for Northwoods Law. Your letter contains numerous inaccuracies and IFW disagrees with your assertions that it has been untimely and incomplete in its response. To the contrary, IFW believes it has worked diligently and in good faith to provide every public record requested in a timely manner. Without addressing each point in your letter, much of which we have discussed with you before, we feel it necessary to set the record straight on several issues.

Upon receipt of the initial request IFW immediately responded by having Corporal John MacDonald of the Warden Service search his records. Corporal MacDonald is the Northwoods Law project manager and all significant communications having to do with the production of the show anywhere in the State of Maine would have involved him. Because of the Corporal's high level of involvement with the show, IFW thought this approach was reasonable and adequate to capture all of the responsive documents and, after providing his records, IFW believed the request had been fully satisfied. However, as later communications with you and your client revealed that modifications to the parameters of the search were necessary, we attempted to work with you to develop an approach, including the use of more specific search terms, that would satisfy your client's demands. IFW also consulted with AAGs in the Attorney General's Office and, ultimately, enlisted the assistance of the Maine Office of Information Technology ("OIT").

Since the start of OIT's involvement in mid-March, more than 250 additional documents (e-mails) have been produced, which we believe comprises 95 to 100% of the responsive records. Eric Stout from OIT devised a comprehensive search protocol and worked personally with every IFW staff person determined to be a possible repository for records relating to the FOAA request. Several factors contributed to the time and expense involved in responding to the request, such as a high volume of "raw hits" found during the computer searches (2,949 e-mails) that needed to be reviewed. Of these, most were either duplicative or non-responsive (relating to matters outside the scope of the request). Based on our consultation with OIT, IFW believes the search process used was appropriate because it involved a consistent method that was designed to produce complete results in the most time-efficient manner.

The charges for IFW's response to your client's request, which has been modified on more than one occasion, are reasonable and directly related to the time required to search for, compile, review, redact and produce responsive documents. IFW has provided your client with good faith estimates of these costs at every step. In fact, IFW conducted some searches at no cost to your client and did not charge for many hours that were actually required to conduct others. Further, IFW looked for ways to reduce the time and cost of responding to your client's request. For example, IFW believed the call sheets (mentioned in your letter) had limited informative value and, at our request, AAG's Randlett and Kiely contacted you to determine whether your client really wanted

FISH AND WILDLIFE ON THE WEB!
www.maine.gov/ifw

E-MAIL ADDRESS:
ifw.webmaster@maine.gov



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF
INLAND FISHERIES & WILDLIFE
284 STATE STREET
41 STATE HOUSE STATION
AUGUSTA, ME 04333-0041
TEL: 207-287-8000

CHANDLER E. WOODCOCK
COMMISSIONER

us to go to the time and expense of producing them. What your letter doesn't disclose is that, after reviewing a number of sample call sheets we provided, at your request, your client decided that, in fact, it did not want them.

Your claim that IFW "intends to charge thousands of dollars to provide the requested correspondence" has no grounds. This appears to be related to your client's demand that IFW's search include the personal e-mail addresses of all of the relevant Northwoods Law production company personnel as search terms. You and your client were provided with a document prepared by Mr. Stout, dated June 22, 2016, that shows the estimated time and cost for searching for these emails under four alternative scenarios – the most expensive alternative being \$345 for approximately 23 hours of anticipated work time.

Also incorrect is your assertion that responsive documents have been withheld for no good reason. Every public record that has been located to date has been produced. IFW has only redacted or withheld documents to the extent they contain information that is confidential by law. Further, the search methodology used by IFW and OIT was not designed to exclude responsive documents. Your belief in this regard appears to be related to search instructions from Mr. Stout dated April 6, 2016. However, during searches Mr. Stout observed that some Northwoods Law crew members included in group communications were listed by their personal e-mails and Mr. Stout modified his instructions to account for this. Such e-mails were not "culled" from the documents as you claim, but were included with the records produced. IFW believed, based on its discussions with Mr. Stout, that the global search terms that were used captured most, if not all of the relevant e-mails. However, recognizing that there might be outliers – e-mails where a crew member communicated with an IFW employee using personal e-mail that wasn't captured in a group e-mail – IFW is willing to refine the search to look for those documents. On June 22, 2016 IFW provided an estimate for that search, as discussed above.

In conclusion, IFW takes its FOAA responsibilities seriously and has made a reasonable and good faith effort to meet your client's requests. It will continue to do so.

Sincerely,

A handwritten signature in black ink, appearing to read "Chandler E. Woodcock", with a long horizontal flourish extending to the right.

Chandler E. Woodcock - Commissioner
Maine Department of Inland Fisheries & Wildlife

CC: Craig Nale, Henry Fouts, & Colleen McCarthy-Reid
Office of Policy and Legal Analysis

FISH AND WILDLIFE ON THE WEB!
www.maine.gov/ifw

E-MAIL ADDRESS:
ifw.webmaster@maine.gov

Sigmund D. Schutz
sschutz@preTi.com
Direct Dial: 207.791.3247

July 1, 2016

VIA EMAIL & U.S. MAIL

Denise M. Brann
Maine Warden Service
284 State Street
41 State House Station
Augusta, ME 04333-0041

Mark Randlett, Esq.
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006

Brenda Kielty, Esq.
Public Access Ombudsman
Office of the Attorney General
6 State House Station
Augusta, Maine 04333

Re: November 2, 2015 Public Records Request re. North Woods Law

Dear Ms. Brann, Mr. Randlett, and Ms. Kielty:

The Maine Warden Service ("MWS") has failed to provide a timely and complete response to a public records request by the *Portland Press Herald / Maine Sunday Telegram* for correspondence between wardens and the production company responsible for the North Woods Law television show. The request is now eight months old and the response remains far from complete. The MWS has now indicated that it intends to charge thousands of dollars to provide the requested correspondence, far in excess of what Maine law allows for this sort of straightforward request.

I have reviewed the MWS invoice of June 27, 2016, in the amount of \$397.50. I have also reviewed the June 29 invoice for another \$15.00. My client, the *Press Herald*, disputes both invoices, requests a waiver of all further fees, and will not pay any further invoices issued by MWS without advance written approval.

I will explain the background and the basis for our position.

I. Background

The MWS allowed the producers of the North Woods Law television program, Engel Entertainment, to film its activities in Maine over the past few years, including activities in Aroostook County.

On November 2, 2015, about eight months ago, *Press Herald* staff writer Colin Woodard made a routine public records request to the MWS for the following:

PRETI FLAHERTY

Denise M. Brann
Mark Randlett, Esq.
Brenda Kielty
July 1, 2016
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Copies of all correspondence – including emails and letters – between personnel at the Maine Warden Service and Engel Entertainment, its agents and subsidiaries in regards to potential or actual filming and/or production in Aroostook County. We request only records created between 1 January 2012 and 1 August 2015.

The *Press Herald* later narrowed the date range of the request to August 1, 2013 to August 1, 2015. A number of wardens communicated in writing with Engel personnel on a frequent basis, so numerous responsive documents exist.

Responding to this request should have been a simple task for the MWS. When the MWS worked with Engel staff to pair film crews and producers with wardens engaged in law enforcement activity, the MWS circulated “call sheets,” including a detailed daily log showing exactly who at Engel was working with the MWS, where and when they were working, and with which members of the MWS. A sample call sheet is attached as Exhibit A. The call sheets list the names and email addresses of all Engel personnel involved in filming at any point in time and describe their movements and locations in Aroostook County and elsewhere. To respond to the *Press Herald's* public records request, the MWS simply had to look at the call sheets to see which wardens were working with which Engel personnel on the relevant dates, and then gather and turn over communications between those wardens and Engel. The *Press Herald* was in the dark, until recently, about the existence of the detailed information contained in the call sheets.

When the *Press Herald* made its request for all correspondence between the MWS and Engel personnel related to filming and production in Aroostook County, the MWS knew exactly which wardens would have created responsive documents, because wardens who interacted with Engel in Aroostook County are all listed on the call sheets. The MWS could easily have complied with the *Press Herald's* request – and Maine’s public record law – by instructing its personnel identified on the call sheets to produce all emails sent to or from the addresses of Engel representatives. Identifying the relevant MWS employees would have been a simple task, given that interactions between the MWS and Engel had been precisely documented on the call sheets.

II. Initial Response Limited to 1 Warden and 29 Emails

For months after receiving the *Press Herald's* request, the MWS inexplicably confined its search to the emails of just one employee, Col. John MacDonald. To make matters worse, the MWS chose to search only for documents with the word “Aroostook” or “county” in them. This obviously ineffectual methodology produced just 29 emails.

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III. The *Press Herald* Protests and Discovers that Many More Wardens Communicated with Engel

Because the response by the MWS was incomplete and untimely, I filed a complaint on behalf of the *Press Herald* with the ombudsman on January 20. I later filed two more complaints. The MWS eventually revealed that a dozen or so other MWS employees had regularly corresponded with Engel personnel. The MWS suggested, however, that it was incapable of identifying who those Engel personnel were, despite having compiled and circulated call sheets and other materials to an email list of precisely those personnel.

When the *Press Herald* pointed out the obvious – that many Engel personnel used email addresses ending in “@engelentertainment.com,” and that the MWS could simply have searched for those email addresses – the MWS, in consultation with the Ombudsman and then Office of Information Technology (“OIT”), conferred privately and developed a complicated system for conducting those searches, one requiring each warden to travel to a state broadband connection, interact with remote servers at OIT, and move emails to remote folders. It was not clear then and remains unclear why wardens could not simply find their own e-mail responsive to the public records request. The *Press Herald* questioned the necessity and efficacy of such a complex and time-consuming process from the outset.

IV. Responsive Documents Are Withheld for No Good Reason

As part of the search process, OIT provided detailed instructions to the wardens to collect emails from a specific list of Engel personnel – a list they presumably received from senior MWS leadership – and then to cull many of the documents responsive to the *Press Herald's* request simply because they were not sent from emails ending in “@engelentertainment.com.” In other words, the process the MWS set up features an extra step designed to remove responsive documents that would otherwise have been made public.

Soon after the *Press Herald* received the OIT instructions it also received from Mr. Randlett sample call sheets – the same documents described above – that list names and e-mail addresses for Engel personnel. Most of their e-mail addresses are not “@engelentertainment.com.” I then received a call from Ms. Kielty and Mr. Randlett asking whether the *Press Herald* actually does want what it had asked for eight months ago: that is, all communications. I responded that it does.

V. Less than Halfway Complete After Eight Months and a \$400 Charge to Search for a Single E-mail Address.

It has now become apparent that the MWS intends to charge thousands of dollars to redo its search to correct the errors it made the first time around. This is unacceptable.

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Page 4

The June 26 invoice for \$400 reflects a search for correspondence between MWS personnel and a *single* Engel staff member's "@gmail.com" address. The *Press Herald* had no idea that the charge would be this substantial to find communications with a single e-mail address. Based on that charge, I infer that MWS intends to charge thousands of dollars to search for the dozen or so additional e-mail addresses listed on the call sheets. In addition to the fact that these searches should have been done right the first time, the charges are out of proportion to the actual cost of typing an email address into a database and hitting the enter key. An excessive charge constitutes a de facto denial of access to public records.

VII. Conclusion

Either the Maine Warden Service is prepared to make its correspondence with persons involved with the North Woods Law television show public, or it is not. The issue now is not what the requested correspondence shows about the conduct of the MWS. Instead, it is the agency's unwillingness to provide a timely and complete response to the *Press Herald's* public records request.

The *Press Herald* disputes the two invoices mentioned above, and requests that further charges be waived because public disclosure of the requested records would contribute to the public understanding of MWS activities. The Legislature's interest in the agency's response to the *Press Herald's* public records request supports a waiver. Whether or not a waiver is granted, the two invoices are excessive and unreasonable, and the *Press Herald* is not willing to pay them, or any additional amounts beyond what it has already paid to get access to the requested public records.

The *Press Herald* simply wants public records to be public, and wants them promptly when it asks for them.

Very truly yours,



Sigmund D. Schutz

SDS:jac

Enclosure

cc: Cliff Schectman, Executive Editor, *Portland Press Herald* (via email)
Steve Greenlee, Managing Editor, *Portland Press Herald* (via email)
Colin Woodard, State & National Affairs Writer *Portland Press Herald* (via email)
Maine Right to Know Advisory Committee (via email)

engelentertainment

everything but the everyday

CALL SHEET: TEAM 1 SOUTH	"NORTH WOODS LAW"	Saturday, May 31, 2014
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Weather Forecast (5/30/14) Cloudy with a few showers. High around 60F. Winds ENE at 5 – 10 mph. Chance of rain 30%.	Weather Forecast (06/01/14) Sunny, along with a few afternoon clouds. High 67F. Winds ESE at 5 to 10 mph.
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UNIT SCHEDULE:

END OF DAY SUMMARY	Saturday 5/31 – Sgt. Spahr and Crpl. Mike Joy continue to work on an OGT complaint about a man possessing illegal wild game. Warden Cody Louder preps for the Academy. Warden Pete Herring reflects on and wraps up the search for Jaden.
FIVE DAY SCHEDULE SUMMARY	Sunday 6/1 – Sgt. Spahr & Crpl. Joy OGT complaint investigation Monday 6/2 – Wrapping out for the week down / Travel Tuesday 6/3- Off Wednesday 6/4- Off Thursday 6/5 - Off

ENGEL ENTERTAINMENT	212-413-9200 OFFICE	212-413-9201 FAX	535 8 th Ave, 7 th fl, New York, NY 10018
Jen Egan	Line Producer 212-413-9205 o	516-807-4729 c	jegan@engelentertainment.com
Molly Corbally	Production Coord. 917-344-7222 o	717-468-2531 c	mcorbally@engelentertainment.com
Jon Goodman	Head of Production 212-413-9207 o	646-239-0222 c	jgoodman@engelentertainment.com
FIELD CREW			
Andy Seestedt	Supervising Producer	917-301-4180 c	Aseestedt@gmail.com
Neil Ray Sommerlatte	FP TEAM 1/SOUTH	281-216-4891 c	Nsommerlatte@yahoo.com
Justin Fitzpatrick	DP TEAM 1/SOUTH	832-746-8234 c	justinkfitz@yahoo.com
Abbey Wells	AP TEAM 1/SOUTH	860-639-9659 c	wells.abbey@gmail.com
Jay King	AP TEAM 1/SOUTH	917-324-8883 c	jaychristopherking@gmail.com
Jimmy Collins	MM/PA TEAM 1/SOUTH	207-749-3489 c	jimmycfilms@gmail.com
Brad Moore	FP TEAM 2/WEST	603-545-8500 c	bdmoore15@comcast.net
Ronnie Hernandez	DP TEAM 2/WEST	646-526-5157 c	rchpictures@earthlink.net
Evan Olmsted	AP TEAM 2/WEST	207-671-5418 c	eolmsted35@gmail.com
Jimmy Wright	MM/PA TEAM 2/WEST	716-572-3760 c	Jwright8887@gmail.com

CAR INFO: AVIS (Sedan) & ENTERPRISE (SUV)

Portland International Jetport [PWM] Office: 207-875-7500 (AVIS) Office: 207-615-0030 (ENTERPRISE)	1001 Westbrook St Portland, ME 04101 HRS: Sun-Sat 6AM-12:15AM (AVIS) HRS: Mon-Sun 6AM-11:59PM (ENT.)	ROADSIDE ASSISTANCE: AAA 1-800-AAA-HELP
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HOTEL INFO:

TEAM 1 Homewood Suites 200 Southborough Dr Scarborough, ME 04074 207-775-2700	CREW MEMBERS Neil Sommerlatte Justin Fitzpatrick Abbey Wells Jay King Jimmy Collins	ROOM NUMBERS Local Room 203 Room 229 Room 124 Local
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Hon. David C. Burns, Chair
Hon. Kimberly Monaghan
Suzanne Goucher
A. J. Higgins
Richard LaHaye
Mary Ann Lynch
Judy Meyer
Kelly Morgan



Christopher Parr
Linda Pistner
Harry Pringle
Helen Rankin
Luke Rossignol
William Shorey
Eric Stout

STATE OF MAINE
RIGHT TO KNOW ADVISORY COMMITTEE

June 24, 2016

Sigmund D. Schutz, Esq.
Preti Flaherty
One City Center
Portland, Maine 04101

Colin S. Woodard
Portland Press Herald/Maine Sunday Telegram
Mainetoday.com
One City Center, 5th Floor
Portland, Maine 04101

VIA E-MAIL AND USPS MAIL

Dear Mr. Schutz and Mr. Woodard,

The Right to Know Advisory Committee has been asked to hold a public meeting regarding the conduct of the Maine Warden Service in response to requests for public records made by the Portland Press Herald/Maine Sunday Telegram pursuant to Maine's Freedom of Access Act (FOAA). The primary role of the Right to Know Advisory Committee is to serve as a resource to ensure compliance with FOAA and to uphold the integrity of the purposes underlying FOAA. See 1 MRSA §411, sub-§ 1. The Advisory Committee is not a fact-finding body or an arbiter of a dispute between a government entity and an individual making a request for public records, but may obtain information about, discuss and consider solutions to problems concerning access to public records. The Advisory Committee also has the authority to make recommendations for statutory changes or best practices in providing the public access to records. See 1 MRSA § 411, sub-§6, ¶¶ G and I.

On behalf of the Advisory Committee, we are writing to ask for your input and any suggestions you may have for changes in policy or law or for the development of best practices based on your recent experience with the Maine Warden Service. To date, the Advisory Committee has not been made aware of any specific suggestions for revisions to the FOAA or changes in practices that might improve the process for those seeking access to public records in the future. We are seeking more information about suggested improvements or revisions to existing law.

Without that necessary input, the Advisory Committee is not able to have any meaningful discussion.

The next meeting of the Advisory Committee is scheduled for Wednesday, July 20, 2016. Please submit any input and suggestions you may have in writing before then. If you have any questions, contact Advisory Committee staff, Craig Nale, Henry Fouts or Colleen McCarthy Reid, in the Office of Policy and Legal Analysis.

Thank you for your consideration.

Sincerely,



Sen. David C. Burns, Chair
Right to Know Advisory Committee



Rep. Kimberly J. Monaghan
Right to Know Advisory Committee

cc: Right to Know Advisory Committee
Brenda L. Kielty, Esq., Public Access Ombudsman

Nale, Craig

From: Robert E. Garland <rgarland7@roadrunner.com>
Sent: Monday, July 18, 2016 3:18 PM
To: Nale, Craig
Cc: Hubbell, Brian
Subject: Discussion item for RTKAC meeting, Wednesday, July 20, 2016

Hi Craig,

Thank you for taking my call. This request, for the Right to Know Advisory Committee to undertake discussion relative to considering legislation requiring local boards and committees to record their executive session meetings held in consideration of personnel matters, came about as a result of my participation in a series of Bar Harbor Town Council executive session meetings leading to the eventual dismissal of the Bar Harbor Police Chief by the Town Manager. I was a member of the Bar Harbor Town Council at the time, and I attended all of the sessions which were held (I believe there were a total of 13 - 14 meetings) except one.

As is well known, the upshot of all of these executive sessions, including a Police Chief requested public "hearing" by the Town Council on Feb 26, 2014, was that the Town Council voted five to two to uphold the Town Manager's decision to dismiss the Police Chief. My principal concern in the aftermath of this affair, after the Police Chief sued the Town Manager for inappropriate dismissal, (which lawsuit is still ongoing) was that the large role the Town Council played in this matter was essentially "off limits"; things said in executive session meetings and the contribution they may or may not have had in the final outcome were protected by executive session privilege. It seemed to me then, and even more so now that it has been disclosed (in depositions taken by the Police Chief's Attorney, Greg Frame) that either the Town Council Chairperson or myself has a very inaccurate recall of what transpired during those meetings, that a record of what was said, by whom, and what the manner of delivery was, could very well become extremely important if legal proceedings develop in personnel matters such as this.

As is much less well known, since no legal proceedings ultimately developed and therefore no depositions were taken, (but which might have been an option had records of the executive sessions existed), was the nature of the Bar Harbor Town Council executive sessions relative to the dismissal (oops, "resignation") of the Town Manager by the Bar Harbor Town Council which followed immediately on the heels of the Police Chief's dismissal. Simply put, there ought to be an avenue of investigation available when such life-changing decisions are under consideration by municipal Councils or Selectmen. "Executive Session" ought not to be an opportunity for mischief, especially when people's lives and livelihoods are at stake. Also, just knowing that such records are available for investigation in the event legal considerations do ultimately arise, might be sufficient to maintain greater civility and adherence to better protocol during executive session meetings.

FYI, although I was one of the two Councilors to vote not to approve the Town Manager's dismissal of the Police Chief, that vote by me was based solely on consideration of the facts presented to us. I have no relationship whatsoever with the dismissed Police Chief beyond a friendly greeting when we meet on the street.

Thank you, Craig, and I hope some of this proves helpful. I do not know the nature of the RTKAC meetings, but if putting a face to this e-mail would be helpful, I would be willing to come to Augusta to appear before the Committee.

Respectfully,

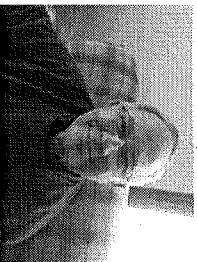
Robert Garland, former Councilor, Town of Bar Harbor

Freedom of Access Act (FOAA) Email Searches
10 Factors for Estimating Time – variables described in sample chart

Eric.Stout@maine.gov, 624-9981

IT Member on Right to Know Advisory Committee

June 10, 2016



This document is based on 7 years of experience assisting with email searches on hundreds of Freedom of Access Act (FOAA) requests. The factors described below are the variables that result in wide-ranging estimates on FOAA requests, even with the best of good-faith intentions.

Factors Affecting Time/ Cost and Accuracy/ Completeness of Email Searches

Most FOAA requests are unique. Some are very narrow and specific, but others are broad and vague. Obviously, it is easier and quicker to respond to FOAA requests that ask for email and documents from a small # of people for a limited/ recent period of time. It's much harder to respond to requests for "anyone in the agency that has information about a certain topic for the past several years." The chart below attempts to break down 10 factors that affect the ease or difficulty in responding to FOAA requests, focusing on the challenges with email and email archive files.

As a general rule of thumb, I would say that a simple FOAA request of 3 search terms should take a person with medium-level skills about 1 hour to find and assemble the resulting emails. The 10 factors listed below and in the chart explain how estimates can vary greatly.

In addition to finding and assembling emails, there may be a need to review emails to redact FOAA-exempt information, such as personally identifiable information (PII). See long list of FOAA statutory exemptions at: <http://www.maine.gov/foaa/law/exceptions.htm>. If the redaction step is needed (especially for certain agencies with sensitive or exempt information), it is hard to estimate the amount of time required, because it requires a careful review, sometimes by attorneys. The amount of time for redaction (if needed) depends on the volume of results found. See #8 below and in the chart.

There are a lot of "ifs" in this general estimate (1 hour for 1 person of medium skill to find and assemble emails using 3 search terms).

The 10 factors I've observed that affect how long a FOIA request will take, and also affect the varying quality of the results are:

1. Skill of the person searching
2. # of people searching
3. Current staff v. former staff
4. Recent (current year) v. past (prior years)
5. Scope of request (broad v. narrow)
6. Search terms (specific v. vague, and # of terms/ topics)
7. Volume of results (10's, 100's, or 1,000's)
8. Amount of review and redaction time needed (for sensitive data, personally identifiable information, exempt by statute, etc.)
9. Attachments requested in the response (or only email)?
10. Delivery of results – paper v. electronic

For the chart below, I use an example of 3 search terms going back 3 years. If the FOIA request is asking for email from prior years, this usually triggers the need to search the person's email archive files, beyond their current mailbox, which has a limit of 2 gigabytes of storage. Mail above that limit of the mailbox size must be archived to separate database files known as Personal Storage (PST) archive files that are stored outside the mailbox, either on the PC hard drive (C drive) or the user's network drive. When the mailbox is close to full, the user is prompted by Outlook to archive emails to a separate archive file that is outside of the regular mailbox.

See chart on next pages.

Example: Assuming a FOAA search with 3 search terms, going back 3 years

Factors Affecting Search Time and Quality of Results	Continuum	Results – Quality/ Completeness	Time to Search and Assemble Results (assuming 3 search terms going back 3 years)
1. Skill of person searching (skill with email searches of multiple folders, including archive files)	Low skill	Poor - won't know how to search archive files, so results incomplete	Variable time (hard to estimate) – depending on if they search by “browsing” through their email and trying to remember what they may have that’s relevant.
	Medium skill	Fair – may know how to search archive files, but results likely incomplete	1 hour average (but results likely incomplete).
	High skill	Good - likely to be complete results, but may miss some older archive files if not actively “attached” to Outlook	1 hour average (results likely good).
2. # of people searching	1 person	Quality depends on the skill of the person, unless assisted by someone with more skill.	Fairly easy to search, assemble, and forward to the agency FOAA Coordinator.
	Few people		Requires assembling multiple results.
	Many people		The more people involved, the more their results have to be assembled and then reviewed by the FOAA coordinator.
3. Current staff v. former staff	current	Even current staff may not know where their older email archive files are stored. They may either miss searching them, or need help from OIT to locate and attach the archive files	Before an older email archive file can be searched, it has to be “attached” to their Outlook. Then it takes several hours for Outlook to “index” the newly attached archive file, before it is search-ready.
	former	Email archives of former staff may not be available, especially back several years	If former staff’s files are to be accessed, they first have to be found, and given to someone else to do the searches. This may require help from OIT to locate the files, and copy for supervisor or someone else to search.

Factors Affecting Search Time and Quality of Results	Continuum	Results – Quality/ Completeness	Time to Search and Assemble Results (assuming 3 search terms going back 3 years)
4. Recent (current year) v. past (prior years)	recent	Typically in active mailbox. Current mailbox folders are easier to search, but even here, people with low/ medium skill typically don't realize that when they activate the search bar, Outlook is only searching "Current folder" ... In order to search all folders, they have to change the option to search "All Items" (people with low/ medium skill typically don't realize this).	
5. Scope of request (broad v. narrow)	past	Uncertain based on availability or archive files. If the FOIA request is overly broad (all emails from all agency staff on a certain subject), it is almost impossible to comply because the email search has to be person-by-person, for each email account. There is no ability to "Google it" to get at email across multiple people's accounts.	Longer time to find, load and search email archive files. There is no ability with our current email system (Microsoft Outlook) to search across multiple people at one pass. Generally these broad FOIA requests would require an extensive amount of time. At \$15 per hour, the requestor generally can't afford what they are asking for. So there should be a discussion about what is a reasonable request that the requestor can afford, and is not overly burdensome to the agency.
	broad	FOIA requests that are very specific are easier to comply with. Remember that email searches have to be done person-by-person, for each individual account.	
	narrow		

Factors Affecting Search Time and Quality of Results	Continuum	Results – Quality/ Completeness	Time to Search and Assemble Results (assuming 3 search terms going back 3 years)
6. Search terms (specific v. vague, and #)	Specific	Specific search terms are best in terms of ability to use Outlook's search function (versus the person's memory). This leads to a better quality and more complete results.	As a general rule of thumb, I would say that a simple FOIA request of 3 search terms should take a person with medium-level skills about 1 hour to find and assemble the resulting emails. There are a lot of "ifs" in this general estimate, depending on the 10 factors described in this chart.
7. Volume of results (10's, 100's, 1,000's)	Vague	FOIA requests that ask for responses on a general topic are harder to comply with, because what would the person search for? If too vague/broad, the results could be in the thousands, and not be affordable to the requestor @ \$15 per hour search time.	The times above are for searching/ finding relevant emails. If only 10's are found, it is faster to review and produce them. But if 1,000's are found, then that takes much longer. Sometimes it is best to do some initial searches to get an idea of volume, and then discuss with the requestor whether they want to make the request more specific or scope it back, in order to be affordable @ \$15 per hour search time.

Factors Affecting Search Time and Quality of Results	Continuum	Results – Quality/ Completeness	Time to Search and Assemble Results (assuming 3 search terms going back 3 years)
8. Amount of review and redaction time	See comments above. This depends largely on the scope of the request, which results in variable volume of results.	Some agencies have sensitive data that cannot be released under FOIA, and is statutorily exempt from being a public record. See: http://www.maine.gov/foia/law/exception.shtml	Often the review and redaction time can be much greater than the actual search time. This is hard to predict, not knowing from the beginning what the volume of results will be. If there is a large volume, then it may be best to discuss with the FOIA requestor to consider scoping back on the request in order to reduce the volume and therefore the cost @ \$15 per hour.
9. Attachments requested (or only email)?	Some email results have a large number of attachments.		If the attachments are to be included in the response, then the agency FOIA Coordinator has to review those documents for possible redaction/ exemption. If those are agreed to be bypassed, then the FOIA response will be less costly.
10. Delivery of results - paper v electronic	Paper	The FOIA requestor can request what format they want the responses to be delivered.	If paper copies, then the time to make those copies is included in the cost.
	Electronic	Some FOIA requestors prefer electronic files, so that they are more easily searchable on their computers.	If electronic files, they can be delivered on a thumb drive, or even forwarded via email.



To members of the Right to Know Advisory Committee:

Planned Parenthood of Northern New England (PPNNE) would like to provide some information as it relates to Agenda item #3 - *Review and potentially develop recommendations for treatment of personal contact information for professions and occupations licensed by the State.*

As a health care provider, we employ a number of licensed medical professionals, who provide health care to 10,000 patients in Maine. We go to great lengths to hire highly qualified professional physicians, physician assistants, nurse midwives, nurse practitioners and nurses and are proud of the services they offer the community.

Unfortunately, our organization and our medical practitioners can find themselves the target of harassment by individuals willing to go to extremes to threaten and intimidate them. Over the course of the past year, we have experienced a nine-fold increase in violence and harassment of our health care providers and as a result, we are deeply committed to protecting the safety of our employees and patients.

In recent years, we have found that unknown individuals are exploiting public right to know laws to harass and intimidate our employees. In Maine, anonymous emails have submitted FOIA requests seeking all information available for a number of our medical practitioners. On one occasion in the fall of 2012, the entire nursing licensing file of an employee was made public to unidentified entities and subsequently posted in hostile contexts on the internet. Information that was released included: home address and telephone numbers, the licensee's social security number, and a photograph of the licensee's face provided at the time of original application as well as other sensitive information, which caused a legitimate concern for the personal safety of our employee.

Following this incident, safety concerns were raised to the Maine State Board of Nursing and the Attorney General's office. During those conversations, we received conflicting answers regarding what information is protected, what is considered public and how these requests should be satisfied. At the conclusion of the conversations, we were told that social security numbers would be redacted, and nurses would be notified when the state receives these requests prior to the release of information to provide the impacted person an opportunity to take action if they chose.

Last year, another series of anonymous emails were submitted for our practitioners. The nurses received no notification aside from a copy of the letter indicating that their licensing file had been released to guptro2@hushmail.com. While no social security numbers were released this time, the information still included addresses, school transcripts, photos and other personal information collected for a license application. The release of this information was incredibly upsetting for our employees and posed legitimate security risks for our organization.

While these requests impacted our employees, the safety risks that exist are not unique to us. Any licensed professional could find themselves a victim of harassment or worse as a result of the information released through these types of FOAA requests.

Recognizing the need for safety precautions, the legislature has enacted laws that provide added protections for certain licensed professionals including private investigators, social workers and members of the Maine Gaming Board. In these cases, a variety of personal information is protected from public disclosure.

Further highlighting the need for legislation is the fact that we have found that licensing boards respond to these FOAA requests differently as there is no uniform response laid out in the law that fairly balances the rights of the public with the safety concerns of the private citizen.

We ask the Right to Know Advisory Committee to consider developing legislation that creates a consistent approach to FOAA requests that provides appropriate protections for licensed individuals.

Thank you for your time and attention.

Sincerely,
Nicole Clegg
Vice President of Public Policy
Planned Parenthood of Northern New England

RIGHT TO KNOW ADVISORY COMMITTEE

AGENDA

August 17, 2016

1:00 p.m.

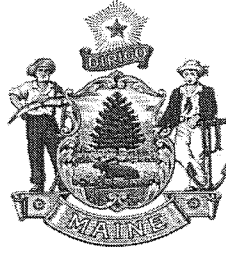
Room 438, State House, Augusta

Convene

1. Welcome and Introductions
2. Review of draft letter to Judiciary Committee regarding public records exception enacted in LD 484 (Public Law 2015, chapter 161) relating to hazardous material transported by railroads
3. Discussion regarding public access to personal contact information for professions and occupations licensed by the State
4. Public Access Ombudsman update & recap of Public Access Officer training
 - Brenda Kiely, Public Access Ombudsman
5. Discussion regarding potential Right to Know Advisory Committee public hearing
6. Review subcommittee recommendations relating to existing public records exceptions
7. Discussion regarding Criminal History Record Information Act (CHRIA) and the Judicial Branch
8. Discussion regarding proposal to require local boards and committees to record executive sessions and preserve these records so that they may be legally discoverable in case of a dispute about the content or propriety of the discussion held during these sessions
9. Discussion regarding anonymous FOAA requests and the extent to which an agency can ask the purpose of a FOAA request
10. Other issues or questions

Adjourn

Hon. David C. Burns, Chair
Hon. Kimberly Monaghan
Suzanne Goucher
Stephanie Grinnell
A. J. Higgins
Richard LaHaye
Mary Ann Lynch
Judy Meyer



Kelly Morgan
Christopher Parr
Linda Pistner
Harry Pringle
Helen Rankin
Luke Rossignol
William Shorey
Eric Stout

STATE OF MAINE
RIGHT TO KNOW ADVISORY COMMITTEE

{date}

Sen. David C. Burns, Senate Chair
Rep. Barry J. Hobbins, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, Maine 04333-0100

Dear Sen. Burns and Rep. Hobbins,

At the Judiciary Committee's request, the Right to Know Advisory Committee reviewed the public records exception in current law that protects as confidential records provided by a railroad company describing hazardous materials transported by the railroad company that are in the possession of a state or local emergency management agency or law enforcement agency, a fire department or other first responder. See 1 MRSA §402, sub-§3, ¶U. We understand that your request was prompted by media articles following enactment of the exception indicating that the public's access to information about the transportation of crude oil through the State may be limited and your interest in ensuring that the public have an additional opportunity to comment and, if necessary, to recommend changes to current law.

The Advisory Committee discussed the public records exception and agreed that the exception may benefit from additional consideration. Although the Advisory Committee offers these comments, we recommend that the Judiciary Committee consider submitting a committee bill to the First Regular Session of the 128th Legislature so that the current exception may be fully vetted by the Legislature in a manner that allows the most meaningful participation by stakeholders, state and local government entities and other members of the public.

The Advisory Committee believes that the current exception is not intended to prevent public access to summary or aggregate information about the transportation of hazardous materials by rail in the State, particularly crude oil, or to prohibit disclosure of information about spills or discharges of hazardous materials. The Advisory Committee expressed the following concerns about the current exception as written.

- Does public disclosure jeopardize the safety of the public and if so, does that safety interest substantially outweigh the public interest in disclosure of the records?

- Does public disclosure disadvantage a business or financial interest and, if so, does that interest substantially outweigh the public interest in disclosure of the records?
- Is the language of the current exception too broad? Is the proposed exception as narrowly tailored as possible? The current law references records describing hazardous materials transported by rail as defined in 49 Code of Federal Regulations 172.101 and represents a table of more than 200 pages identifying hazardous materials subject to the exception.
- Does the current language need to be clarified? Does the exception apply to records possessed by the Department of Environmental Protection that relate only to its function as a “first responder”? Are records held by the DEP that are collected from railroad companies for other purposes subject to the exception?
- Is the exception intended to limit the release of information on a retrospective basis? How long should information be kept confidential?

We are hopeful that we've provided enough information to assist you in further evaluating this public records exception. Please feel free to contact us or our committee staff if you have any questions or would like additional input.

Thank you for your consideration.

Sincerely,

Sen. David C. Burns, Chair
Right to Know Advisory Committee

cc: Right to Know Advisory Committee

POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES

Policy Option	Source	Template/ Example of statutory language
<p>Require applicant or licensee to provide current professional address telephone number as public contact address; personal residential address and telephone number are confidential information and may not be disclosed unless provided as public contact address</p>	<p>Maine law: 32 MRSA §§90-B & 91-B (emergency medical services); 32 MRSA §2109 (nursing); 32 MRSA §2600-A (osteopathic medicine); 32 MRSA §3300-A (medicine)</p>	<p>§ ____ . CONFIDENTIALITY OF PERSONAL INFORMATION OF APPLICANT OR LICENSEE An applicant or licensee shall provide the board with a current professional address and telephone number, which will be their public contact address, and a personal residence address and telephone number. <u>An applicant's or licensee's personal residence address and telephone number is confidential information and may not be disclosed except as permitted by this section or as required by law, unless the personal residence address and telephone number have been provided as the public contact address.</u> Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted by this section or as required by law. The personal health information and personal residence address and telephone number may be provided to other governmental licensing or disciplinary authorities or to any health care providers located within or outside this State that are concerned with granting, limiting or denying a physician's employment or privileges.</p>
<p>Designate home address and home telephone number as confidential; disclosure by board and staff permitted as necessary to perform duties and functions</p>	<p>Maine law: 32 MRSA §7032 (Social workers)</p>	<p>§ 7032. Addresses confidential <u>The address and telephone number of an applicant for licensure or a person licensed under this chapter that are in the possession of the board are confidential.</u> Nothing in this section prohibits the board and its staff from using and disclosing the address and telephone number of an applicant or licensee as necessary to perform the duties and functions of the board.</p>
<p>Designate home address and telephone number confidential; disclosure permitted by written consent, by court order, for criminal justice purposes or for permitting purposes by law enforcement or permitting auths.</p>	<p>Maine law: 32 MRSA §8124 (Professional investigators)</p>	<p>§8124. CONFIDENTIAL INFORMATION <u>The home address and home telephone number of a professional investigator or investigative assistant obtained by the State under this chapter are confidential</u> and may not be disclosed by the board except by written consent of the subject of the information, by court order, for criminal justice purposes or for permitting purposes by law enforcement agencies or permitting authorities.</p>

**POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF
PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES**

Policy Option	Source	Template/ Example of statutory language
Designate residential addresses and telephone numbers used as business addresses or telephone numbers as "not public records"	Maine law: 32 MRSA §16607, sub-§2, ¶ E (Securities)	<p>2. Nonpublic records. <u>The following records are not public records and are not available for public examination</u> under subsection 1:</p> <p>E. Any social security number, <u>residential address unless used as a business address and residential telephone number unless used as a business telephone number contained in a record that is filed,</u></p>
Designate home address, home telephone number, home email address, personal cellular telephone number and personal pager number as not public records	Maine law: 1 MRSA §402, sub-§3, ¶O (public employees except for elected officials)	<p>3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:</p> <p>O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:</p> <p>(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and</p> <p>(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials;</p>
Designate all applications for a license and all documents made part of an application	Maine law : 32 MRSA §9418 (private security guards)	§9418. CONFIDENTIALITY OF APPLICATION AND INFORMATION COLLECTED BY THE COMMISSIONER

**POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF
PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES**

Policy Option	Source	Template/ Example of statutory language
<p>confidential, but require permanent record of each license for public inspection and require disclosure of list of names and current addresses of security guards upon specific request</p>		<p>Notwithstanding Title 1, chapter 13, subchapter 1, <u>all applications for a license to be a contract security company and any documents made a part of the application, refusals and any information of record collected by the commissioner during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 9405 and 9411-A, and all information of record collected by the commissioner during the process of ascertaining whether a natural person meets the requirements of section 9410-A, are confidential and may not be made available for public inspection or copying.</u> The applicant or natural person may waive this confidentiality by written notice to the commissioner. All proceedings relating to the issuance of a license to be a contract security company are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant.</p> <p><u>The commissioner or his designee shall make a permanent record of each license to be a contract security company in a suitable book or file kept for that purpose. The record shall include a copy of the license and shall be available for public inspection. Upon a specific request, the commissioner or his designee shall provide a list of names and current addresses of security guards employed by licensed contract security companies.</u></p>
<p>Require directory of certain employee/licensee information; designate other information about employee confidential</p>	<p>Maine law: 20-A MRSA § 6101 (teachers, school employees)</p>	<p>§6101. RECORD OF DIRECTORY INFORMATION</p> <p>The following provisions apply to employee records.</p> <p>1. Contents. <u>A school administrative unit shall maintain a record of directory information on each employee as follows:</u></p> <ul style="list-style-type: none"> A. Name; B. Dates of employment; C. Regular and extracurricular duties, including all courses taught in that school administrative unit;

**POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF
PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES**

Policy Option	Source	Template/ Example of statutory language
		<p>D. Post-secondary educational institutions attended;</p> <p>E. Major and minor fields of study recognized by the post-secondary institutions attended; and</p> <p>F. Degrees received and dates awarded.</p> <p>2. Access. The following provisions apply to access of employee records.</p> <p>A. <u>The record of directory information shall be available for inspection and copying by any person.</u></p> <p>B. <u>Except as provided in paragraph A, information in any form relating to an employee or applicant for employment, or to the employee's immediate family, must be kept confidential if it relates to the following:</u></p> <ul style="list-style-type: none"> (1) All information, working papers and examinations used in the examination or evaluation of all applicants for employment; (2) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders; (3) Performance evaluations, personal references and other reports and evaluations reflecting on the quality or adequacy of the employee's work or general character compiled and maintained for employment purposes; (4) Credit information; (5) Except as provided by subsection 1, the personal history, general character or conduct of the employee or any member of the employee's immediate family; (6) Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action;

POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES

Policy Option	Source	Template/ Example of statutory language
		<p>(7) Social security number;</p> <p>(8) The teacher action plan and support system documents and reports maintained for certification purposes; and</p> <p>(9) Criminal history record information obtained pursuant to section 6.103.</p> <p>C. Any written record of a decision involving disciplinary action taken with respect to an employee by the governing body of the school administrative unit shall not be included within any category of confidential information set forth in paragraph B.</p> <p>3. Commissioner's review. The commissioner shall have access to any of the records or documents designated as confidential in this section for carrying out the commissioner's duties pursuant to section 13020. Copies of any such records or documents shall simultaneously be provided to the employee.</p> <p>The commissioner shall also have access to support system documents for carrying out the commissioner's certification and support system approval duties pursuant to chapter 502 and to other confidential employee records for carrying out the commissioner's school approval duties pursuant to chapter 206.</p>
Designate certain personal information related to applicants or licensees as confidential	Maine law: 8 MRSA §1006 (Gambling Control Board; confidentiality of records and information)	<p>§1006. CONFIDENTIALITY OF RECORDS AND INFORMATION</p> <p>1. Application and licensing records and information. This subsection applies to information or records included in an application or materials required by the board for issuance of a license pursuant to this chapter, including records obtained or developed by the board or department related to an applicant or licensee. For the purposes of Title 1, section 402, subsection 3, the following records and information are designated as confidential and may not be disclosed except as provided:</p>

POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES

Policy Option	Source	Template/ Example of statutory language
		<p>A. Trade secrets as defined in Title 10, section 1542 and proprietary information that if released could be competitively harmful to the submitter of the information;</p> <p><u>B. Information that if released would constitute an unwarranted invasion of personal privacy of a key executive, gaming employee or any other individual included in application materials, as determined by the board. Upon request, the board shall release a summary of information confidential under this paragraph describing the basis for the board's action in granting, denying, renewing, suspending, revoking or failing to grant or renew a license issued under this chapter. In preparing a summary, the board shall maximize public access to that information while taking reasonable measures to protect the confidentiality of that information;</u></p> <p>C. Key executive or gaming employee compensation, except that:</p> <ul style="list-style-type: none"> (1) Executive compensation required to be filed with the federal Securities and Exchange Commission or, with respect to applicants or licensees that are not publicly traded corporations, executive compensation that would be required to be filed with the federal Securities and Exchange Commission were the applicant or licensee a publicly traded corporation or controlled by a publicly traded corporation is not confidential; and (2) Compensation of the officers of the business entity that is organized or authorized to do business in this State who are responsible for the management of gaming operations, as determined by the board, is not confidential; <p>D. Financial, statistical and surveillance information related to the applicant or licensee that is obtained by the board or department from the central site monitoring system or surveillance devices;</p> <p>E. Records that contain an assessment by a person who is not employed</p>

**POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF
PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES**

Policy Option	Source	Template/ Example of statutory language
		<p>by the board or the department of the creditworthiness, credit rating or financial condition of any person or project, including reports that detail specific information for presentation to the board or department. Persons retained by the board or department to provide such an assessment shall prepare reports that indicate their conclusions and summarize information reviewed by them in a way that maximizes public access to that information;</p> <p>F. Information obtained from other jurisdictions designated as confidential by the jurisdiction from which it is obtained and that must remain confidential as a condition of receipt. The board and the department may use information designated as confidential by the jurisdiction from which it is obtained but shall first make reasonable efforts to use information that is known to be publicly available from another source;</p> <p>G. Information that is designated confidential under federal law whether obtained from federal authorities or provided to the board or department by an applicant, licensee or key executive; and</p> <p><u>H. Birth dates, social security numbers, home addresses and telephone numbers, passport numbers, driver's license numbers, fingerprints, marital status, family relationships and support information, health status, personal financial records and tax returns of any individuals.</u></p>
Prohibit posting of "personal information" about professional and occupational licenses on the Internet	California law: Section 27, Business and Professions Code	27. (a) Each entity specified in subdivisions (c), (d), and (e) shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related

POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES

Policy Option	Source	Template/ Example of statutory language
<p>Designate information pertaining to applicants and licenses confidential with certain exceptions; names, addresses, license information of applicants and licensees is not confidential and registry must be maintained and available to public</p>	<p>Missouri law: Section 324.001(8) (Division of Professional registration) and 324.032 (registry of licenses)</p>	<p>enforcement action, including accusations filed pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. <u>The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.</u></p>
<p>Designate information pertaining to applicants and licenses confidential with certain exceptions; names, addresses, license information of applicants and licensees is not confidential and registry must be maintained and available to public</p>	<p>Missouri law: Section 324.001(8) (Division of Professional registration) and 324.032 (registry of licenses)</p>	<p>8. <u>All educational transcripts, test scores, complaints, investigatory reports, and information pertaining to any person who is an applicant or licensee of any agency assigned to the division of professional registration by statute or by the department are confidential and may not be disclosed to the public or any member of the public, except with the written consent of the person whose records are involved.</u> The agency which possesses the records or information shall disclose the records or information if the person whose records or information is involved has consented to the disclosure. Each agency is entitled to the attorney-client privilege and work-product privilege to the same extent as any other person. Provided, however, that any board may disclose confidential information without the consent of the person involved in the course of voluntary interstate exchange of information, or in the course of any litigation concerning that person, or pursuant to a lawful request, or to other administrative or law enforcement agencies acting within the scope of their statutory authority. <u>Information regarding identity.</u></p>

**POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF
PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES**

Policy Option	Source	Template/ Example of statutory language including names and addresses, registration, and currency of the license of the persons possessing licenses to engage in a professional occupation and the names and addresses of applicants for such licenses is not confidential information.
Designate personal information about licensees and applicants confidential and exempt from public records law	North Dakota law: NDCC §44-04-18.1 (exemptions from public records law)	<p>Registry of licenses, permits, and certificates issued, contents--copying of registry information.</p> <p>324.032. The division of professional registration shall maintain, for each board in the division, a <u>registry of each person holding a current license, permit, or certificate issued by that board. The registry shall contain the name, Social Security number, and address of each person licensed or registered together with other relevant information as determined by the board. The registry for each board shall at all times be available to the board and copies shall be supplied to the board on request. Copies of the registry, except for the registrant's Social Security number, shall be available from the division or the board to any individual who pays the reasonable copying cost.</u> Any individual may copy the registry during regular business hours. The information in the registry shall be furnished upon request to the family support division. Questions concerning the currency of license of any individual shall be answered, without charge, by the appropriate board. <u>Each year each board may publish, or cause to be published, a directory containing the name and address of each person licensed or registered for the current year together with any other information the board deems necessary.</u> Any expense incurred by the state relating to such publication shall be charged to the board. An official copy of any such publication shall be filed with the director.</p>
		<p>4. Except as otherwise specifically provided by law, <u>personal information regarding a licensee maintained by an occupational or professional board, association, state agency, or commission created by law is exempt.</u> As used in this section, "licensee" means an individual who has applied for, holds, or</p>

POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES

Policy Option	Source	Template/ Example of statutory language
Designate home telephone number and email address of applicants and licensees confidential; require provider profile of all licensees to be public	Indiana law: IC 25-1-5-10 (provider profile); IC 25-1-5-11 (confidentiality of personal information)	<p>has held in the past an occupational or professional license, certificate, credential, permit, or registration issued by a state occupational or professional board, association, agency, or commission.</p> <p>From 44-04-18-1 (2): As used in this section, "<u>personal information</u>" means a <u>person's home address; home telephone number or personal cell phone number; photograph; medical information; motor vehicle operator's identification number; public employee identification number; payroll deduction information; the name, address, telephone number, and date of birth of any dependent or emergency contact; any credit, debit, or electronic fund transfer card number; and any account number at a bank or other financial institution.</u></p>
		<p>IC 25-1-5-10 Provider profiles Sec. 10. (a) As used in this section, "provider" means an individual licensed, certified, registered, or permitted by any of the entities described in IC 25-0.5-6.</p> <p>(b) <u>The agency shall create and maintain a provider profile for each provider described in subsection (a).</u></p> <p>(c) <u>A provider profile must contain the following information:</u></p> <p>(1) <u>The provider's name.</u></p> <p>(2) <u>The provider's license, certification, registration, or permit number.</u></p> <p>(3) <u>The provider's license, certification, registration, or permit type.</u></p> <p>(4) <u>The date the provider's license, certification, registration, or permit was issued.</u></p> <p>(5) <u>The date the provider's license, certification, registration, or permit expires.</u></p> <p>(6) <u>The current status of the provider's license, certification, registration, or permit.</u></p> <p>(7) <u>The provider's city and state of record.</u></p>

**POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF
PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES**

Policy Option	Source	Template/ Example of statutory language
		<p><u>(8) A statement of any disciplinary action taken against the provider within the previous ten (10) years by an entity described in IC 25-0.5-6.</u></p> <p><u>(d) The agency shall make provider profiles available to the public.</u></p> <p>(e) The computer gateway administered by the office of technology established by IC 4-13.1-2-1 shall make the information described in subsection (c)(1), (c)(2), (c)(3), (c)(6), (c)(7), and (c)(8) generally available to the public on the Internet.</p> <p>(f) The agency may adopt rules under IC 4-22-2 to implement this section.</p> <p>IC 25-1-5-11</p> <p>Personal information; confidentiality; Social Security numbers; access; exceptions to confidentiality</p> <p>Sec. 11. (a) As used in this section, "applicant" means an individual who applies for a license, certificate, registration, or permit issued by a board under this title.</p> <p>(b) As used in this section, "licensee" means an individual who is or has been licensed, certified, or registered by a board under this title.</p> <p><u>(c) As used in this section, "personal information" means the following:</u></p> <p><u>(1) Home telephone number.</u></p> <p><u>(2) Electronic mail address.</u></p> <p><u>(d) Except as otherwise provided in this section, the personal information of an individual who is:</u></p> <p><u>(1) a licensee;</u></p> <p><u>(2) an applicant; or</u></p> <p><u>(3) a board member;</u></p> <p><u>is confidential for purposes of IC 5-14-3-4 and may not be disclosed to the public by the agency or a board.</u></p> <p>(e) An applicant or a licensee shall provide the applicant's or licensee's Social Security number to the agency.</p> <p>(f) The agency and the boards shall collect and release the applicant's or licensee's Social Security number as provided in state or federal law.</p>

POLICY OPTIONS TO ADDRESS CONFIDENTIALITY OF PERSONAL INFORMATION ABOUT PROFESSIONAL AND OCCUPATIONAL LICENSEES

Policy Option	Source	Template/ Example of statutory language
		<p>(e) Notwithstanding IC 4-1-10-3, the agency and the boards may allow access to the Social Security number of each applicant or licensee to:</p> <p>(1) a testing service that provides the examination for licensure, certification, or registration to the agency or the boards; or</p> <p>(2) an individual state regulatory board or an organization composed of state regulatory boards for the applicant's or licensee's profession for the purpose of coordinating:</p> <p>(A) licensure, certification, or registration; and</p> <p>(B) disciplinary activities among the individual states.</p> <p>(h) Notwithstanding subsection (d), the agency or a board may disclose personal information of an individual described in subsection (d) if the person requesting the information provides proof of identity and represents that the use of the personal Indiana Code information will be strictly limited to at least one (1) of the following:</p> <p>(1) For use by a government agency, including a court or law enforcement agency, in carrying out its functions, or a person acting on behalf of a government agency in carrying out its functions.</p> <p>(2) For use in connection with a civil, a criminal, an administrative, or an arbitration proceeding in a court or government agency or before a self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or under an order of a court.</p> <p>(3) For use in research activities, and for use in producing statistical reports, as long as the personal information is not published, re-disclosed, or used to contact the individuals who are the subject of the personal information.</p> <p>(4) For use by any person, when the person demonstrates, in a form and manner prescribed by the agency, that written consent has been obtained from the individual who is the subject of the information.</p> <p>(5) For any other use specifically authorized by law that is related to the agency or a board or to public safety.</p>

FOR RTKAC
Review re: LD 1171

Died Between Houses
Majority OTP-A Accepted
in House; Minority on TP
Accepted in Senate
E.D. 1171

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Date: (Filing No. H-)

JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT “ ” to H.P. 802, L.D. 1171, Bill, “An Act To Protect Certain Information under the Maine Human Rights Act”

Amend the bill in section 1 in paragraph B in the 8th line (page 1, line 11 in L.D.) by inserting after the following: "investigation." the following: 'The commission may direct that information designated confidential under subsection 5 be redacted from records and documents before those records and documents are provided to the commission.'

Amend the bill by striking out all of section 2 and inserting the following:

'Sec. 2. 5 MRSA §4612, sub-§5, as amended by PL 2011, c. 613, §20 and affected by §29, is repealed and the following enacted in its place:

5. Confidentiality. The Legislature finds that a person who participates in the commission's investigative process as a complainant, a respondent or otherwise has a right to privacy in certain information the person provides to the commission. This subsection governs the confidentiality of certain information.

A. The following information is confidential and may not be disclosed:

- (1) The identity of a person who is not a party to a complaint;
- (2) Medical, counseling, psychiatric and other records revealing a person's medical or mental health condition or disability;
- (3) The identity of a minor, including a minor who is a party to a complaint;
- (4) Personnel records, including payroll records;
- (5) Social security numbers, personal telephone numbers and home addresses, unless a home address is a material fact at issue in an investigation;
- (6) Banking and financial information, including credit checks, unless such information is directly related to an undue burden defense or other material fact at issue in an investigation;
- (7) Criminal history record information that is not otherwise made public by law;

COMMITTEE AMENDMENT

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1 (8) Evidence of conduct or statements made in compromise settlement
2 negotiations, offers of settlement and any final agreements made prior to the
3 conclusion of an investigative process, unless the parties otherwise agree in
4 writing; and

5 (9) The identity of a complainant or a 3rd-party witness who has established a
6 compelling and immediate need to proceed with or participate in an investigation
7 with anonymity or a pseudonym. This need must be determined necessary by the
8 commission or its executive director to avoid imminent and serious harm.

9 B. Information designated as confidential in paragraph A may not be released
10 without the written authorization of the person who is the subject of the information,
11 except that during an investigation conducted pursuant to subsection 1, if the case
12 relates to the complainant's medical diagnosis or disability, the respondent is entitled
13 to receive unredacted copies of the complainant's medical records, medical diagnoses,
14 medical information and information regarding any disability experienced by the
15 complainant. Information under this paragraph may be released by the commission
16 to the respondent only if:

17 (1) The complainant authorizes that disclosure to the respondent by signing a
18 medical release form provided by the commission; and

19 (2) The respondent signs a nondisclosure agreement provided by the commission
20 and agrees to keep all medical, counseling, psychiatric or other records that
21 reveal that person's medical or mental health condition or disability confidential
22 during the pendency of the investigation and after the investigation has
23 concluded.

24 C. Nothing in this subsection may be construed to limit the ability of the commission
25 during the pendency of an investigation or during its deliberations in a complaint at a
26 public hearing to consider or discuss information designated confidential under this
27 subsection, if that information is relevant to consideration of and deliberation in the
28 complaint.

29 D. At the close of the investigation, the signed report of the investigator is a public
30 record. Drafts of the report of the investigator are not public records except that if the
31 final recommendation to the commission has been changed during the editing
32 process, the final draft containing the earlier recommendation is a public record.

33 E. Nothing in this subsection may be construed to limit the ability of a person to
34 provide written authorization to disclose information about that person that is
35 designated confidential by this section.'

36 **SUMMARY**

37 This amendment is the majority report of the committee. It replaces section 2 of the
38 bill but, like the bill, it revises the confidentiality provisions of the Maine Human Rights
39 Act. This amendment protects from public disclosure information in the records of the
40 Maine Human Rights Commission that identifies a minor, a person's medical condition or
41 disability, the identity of a person not a party to a complaint at the commission, personnel
42 records, social security numbers, residential addresses and personal phone numbers,

COMMITTEE AMENDMENT

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1 banking and financial information, criminal history information not otherwise made
2 public by law and the identity of a person who has established a compelling and
3 immediate need to proceed with or participate in a commission investigation with
4 anonymity.

5

FISCAL NOTE REQUIRED

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(See attached)



127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1171

H.P. 802

House of Representatives, March 31, 2015

An Act To Protect Certain Information under the Maine Human Rights Act

Reference to the Committee on Judiciary suggested and ordered printed.

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative WARREN of Hallowell.
Cosponsored by Senator KATZ of Kennebec and
Representatives: EVANGELOS of Friendship, GINZLER of Bridgton, HOBBS of Saco,
McCREIGHT of Harpswell, MOONEN of Portland, SHERMAN of Hodgdon, Senators:
BURNS of Washington, JOHNSON of Lincoln.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §4612, sub-§1, ¶B,** as amended by PL 2009, c. 235, §2, is
3 further amended to read:

4 B. The commission or its delegated commissioner or investigator shall conduct such
5 preliminary investigation as it determines necessary to determine whether there are
6 reasonable grounds to believe that unlawful discrimination has occurred. In
7 conducting an investigation, the commission, or its designated representative, must
8 have access at all reasonable times to premises, records, documents, individuals and
9 other evidence or possible sources of evidence and may examine, record and copy
10 those materials and take and record the testimony or statements of such persons as are
11 reasonably necessary for the furtherance of the investigation. The commission may
12 issue subpoenas to compel access to or production of those materials or the
13 appearance of those persons, subject to section 4566, subsections 4-A and 4-B, and
14 may serve interrogatories on a respondent to the same extent as interrogatories served
15 in aid of a civil action in the Superior Court. The commission may administer oaths.
16 The complaint and evidence collected during the investigation of the complaint, other
17 than data ~~identifying persons not parties to the complaint~~ designated confidential
18 under subsection 5, is a matter of public record at the conclusion of the investigation
19 of the complaint prior to a determination by the commission. An investigation is
20 concluded upon issuance of a letter of dismissal or upon listing of the complaint on a
21 published commission meeting agenda, whichever first occurs. Prior to the
22 conclusion of an investigation, all information possessed by the commission relating
23 to the investigation is confidential and may not be disclosed, except that the
24 commission and its employees have discretion to disclose such information as is
25 reasonably necessary to further the investigation. Notwithstanding any other
26 provision of this section, the complaint and evidence collected during the
27 investigation of the complaint may be used as evidence in any subsequent
28 proceeding, civil or criminal. The commission must conclude an investigation under
29 this paragraph within 2 years after the complaint is filed with the commission.

30 **Sec. 2. 5 MRSA §4612, sub-§5,** as amended by PL 2011, c. 613, §20 and affected
31 by §29, is repealed and the following enacted in its place:

32 **5. Confidentiality.** This subsection governs the confidentiality of certain
33 information.

34 A. Records of the commission that are open to the public under Title 1, chapter 13
35 must be kept in such a manner as to ensure that:

36 (1) Information identifying a person who is not a party to a complaint under this
37 chapter as a complainant or a respondent is not reflected in the record; and

38 (2) Medical records, medical diagnoses, medical information and information
39 regarding a complainant's disability is not reflected in the record.

40 B. Information identifying a minor is confidential and records of the commission that
41 are open to the public under Title 1, chapter 13 must be kept in such a manner as to
42 ensure that information identifying a minor is not reflected in the record.

1 C. Medical records, medical diagnoses, medical information and information
2 regarding an individual's disability are confidential and may not be released without
3 the written authorization of the individual who is the subject of the medical records,
4 medical diagnoses, medical information and information regarding the disability,
5 except that:

6 (1) During an investigation conducted pursuant to subsection 1, the commission
7 or its delegated commissioner or investigator may request and is entitled to
8 receive access to the complainant's medical records, medical diagnoses, medical
9 information and information regarding any disability experienced by the
10 complainant;

11 (2) During an investigation conducted pursuant to subsection 1, medical records,
12 medical diagnoses, medical information and information regarding an
13 individual's disability that are used by an investigator must be provided to the
14 commission or its delegated commissioner or investigator with the names
15 redacted of individuals who are not parties to the complaint, except that, upon
16 request, the commission or its delegated commissioner or investigator and the
17 complainant may receive unredacted records;

18 (3) During an investigation conducted pursuant to subsection 1, if the case
19 relates to the complainant's medical diagnoses or disability, the respondent is
20 entitled to receive unredacted copies of the complainant's medical records,
21 medical diagnoses, medical information and information regarding any disability
22 experienced by the complainant, if:

23 (a) The complainant authorizes that disclosure to the respondent by signing
24 the medical release form provided by the commission; and

25 (b) The respondent signs the nondisclosure agreement provided by the
26 commission;

27 (4) Nothing in this paragraph may be construed to limit the ability of the
28 commission during the pendency of an investigation or during its deliberations on
29 a complaint at a public hearing to consider or discuss a complainant's medical
30 records, medical diagnoses, medical information and information regarding any
31 disability experienced by the complainant if that information is relevant to
32 consideration of and deliberation on the complaint; and

33 (5) The commission may provide to the parties to a complaint and their counsel
34 an unredacted copy of an investigator's report concerning that complaint.

35 Nothing in this paragraph may be construed to limit the ability of a complainant or
36 other individual to provide written authorization to disclose the complainant's or the
37 individual's own medical records, medical diagnoses, medical information and
38 information regarding the complainant's or the individual's disability.

39 **SUMMARY**

40 This bill protects from public disclosure information in the records of the Maine
41 Human Rights Commission that identifies minors. It also designates as confidential
42 medical records, medical diagnoses, medical information and information regarding an

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1 individual's disability contained in the commission's records. The bill specifies that
2 medical records, medical diagnoses, medical information and information regarding an
3 individual's disability may not be disclosed without the written authorization of the
4 individual who is the subject of the medical records or medical diagnoses and provides
5 specific exceptions designed to authorize disclosure necessary to further investigation of
6 and deliberation on complaints.





HOUSE OF REPRESENTATIVES

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Charlotte May Warren

19 Oakwood Drive
Hallowell, ME 04347
Residence: (207) 441-9116

Testimony in Support of

LD 1171, An Act to Protect Certain Information under the Maine Human Rights Act

Senator Burns, Representative Hobbins and Fellow Members of the Judiciary Committee, I am pleased to present to you, LD 1171, An Act to Protect Certain Information under the Maine Human Rights Act.

The Maine Human Rights Act was enacted to prevent discrimination based on race, color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin, age and familial status. The Act invests the Maine Human Rights Commission, an investigative agency, with the power to investigate all forms of discrimination in order to promote the full enjoyment of human rights by our citizens. In doing so, the Commission has the power to conduct hearings, request and subpoena records, and do everything reasonably necessary to perform its duties.

The Commission's ability to investigate complaints and collect all relevant information to the complaint is necessarily fairly vast, and often may involve the collection of otherwise highly confidential records, including medical records, for example.

I have sponsored LD 1171 because under current law, the only information collected in the course of an investigation that is designated as confidential at the conclusion of the investigation is "data identifying persons not parties to the complaint." All other information collected during the course of an investigation is specifically designated as "a matter of public record at the conclusion of the investigation of the complaint prior to a determination by the commission."

The effect of current law is that otherwise confidential, highly sensitive records that are collected in the course of an investigation automatically become a matter of public record at the conclusion of an investigation. If, for example, a parent or guardian files a complaint on behalf of a child, the identity of that child is automatically a matter of public record at the conclusion of an investigation. If someone files a complaint alleging disability discrimination, and the Commission receives highly sensitive medical records during the course of the investigation, all of these otherwise confidential medical records automatically become a matter of public record at the conclusion of the investigation. There are no exceptions, except for the identity of third parties. This is not right. A person should not have to choose between asserting their rights and keeping highly sensitive, otherwise confidential records private. LD 1171 reasonably and fairly addresses this problem.

LD 1171 designates as confidential, and protects from public disclosure, certain records that are otherwise confidential and it also protects from public disclosure the identification of minors. The bill also retains the current provision allowing for confidentiality for third parties. While LD 1171 ensures protection of certain records, it allows for the individual who is the subject of the records to provide written authorization for disclosure. The bill also anticipates and allows exceptions for disclosures necessary to investigate complaints, or deliberation on complaints, at public hearing.

LD 1171 simply protects from public disclosure records that are otherwise confidential, and by doing so ensures that the Commission can do its work investigating complaints while at the same time ensuring that sensitive medical information will not automatically become public record at the conclusion of an investigation. I urge you to support this important legislation.



Maine Human Rights Commission

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Phone (207) 624-6290 ▪ Fax (207) 624-8729 ▪ TTY: Maine Relay 711

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Amy M. Sneirson
EXECUTIVE DIRECTOR

Barbara Archer Hirsch
COMMISSION COUNSEL

April 28, 2015

The Honorable David Burns, Senate Chair
The Honorable Barry Hobbins, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333

Re: LD 1171, "An Act to Protect Certain Identifying Information under the Maine Human Rights Act"

Dear Senator Burns, Representative Hobbins, and members of the Joint Standing Committee on Judiciary:

The Maine Human Rights Commission - the State agency charged with enforcing the Maine Human Rights Act, 5 M.R.S. §§ 4551, *et seq.* ("MHRA") - has the duty of investigating, conciliating, and at times litigating discrimination cases under the MHRA. It is also charged with promulgating rules and regulations to effectuate the MHRA and with making recommendations for further legislation or executive action concerning infringements on human rights or personal dignity in Maine. 5 M.R.S. § 4566(7), (11). To that end, the Commission is pleased to provide this testimony in support of LD 1171.

The MHRA - which makes it unlawful to discriminate in employment, housing, education, public accommodations, and extension of credit - declares it to be the State's policy to prevent discrimination against a person with a physical or mental disability, race/color, sex, sexual orientation, age, religion, and ancestry/national origin². 5 M.R.S. §§ 4552 and 4572.

Records related to medical conditions or disabilities

To take advantage of the remedies offered under the MHRA, a person must file a claim with the Maine Human Rights Commission ("Commission") and understand that his/her complaint will be sent to the party about whom they are complaining. If a claim relates to disability, the complainant must file a release allowing the respondent to share medical records and discuss them with the Commission so the Commission can consider the disability-related issues at hand. This means that complainants must allow their current and former employers, housing providers, restaurants, hotels, doctors, etc., to consider highly personal medical or disability-related information as part of the Commission's process. While our investigative process is pending, the Commission has a statutory obligation to maintain confidentiality of records here - we cannot

² The MHRA also prohibits discrimination in employment because of a previous assertion of a workers' compensation claim or actions protected under the Whistleblowers' Protection Act, and in housing because of familial status and source of income. 5 M.R.S. § 4572.

even confirm that a particular complaint has been filed here. See 5 M.R.S. § 4612(1)(B) (“Prior to the conclusion of an investigation, all information possessed by the commission relating to the investigation is confidential and may not be disclosed, except that the commission and its employees have discretion to disclose such information as is reasonably necessary to further the investigation.”). The parties each sign a non-disclosure agreement as well, agreeing to keep anything that they learn through our process confidential. This offers complainants some measure of confidentiality for their medical or disability-related records during our process.

However, this measure of confidentiality ends when a case is dismissed, withdrawn, or completed via investigation here. At that point, under the MHRA, everything in a case file becomes subject to the Freedom of Access Act (1 M.R.S. §§ 400 *et seq.*). The MHRA specifically provides that “[t]he complaint and evidence collected during the investigation of the complaint, other than data identifying persons not parties to the complaint, is a matter of public record at the conclusion of the investigation of the complaint prior to a determination by the commission.” 5 M.R.S. § 4612(1)(B) (also providing that “[a]n investigation is concluded upon issuance of a letter of dismissal or upon listing of the complaint on a published commission meeting agenda, whichever first occurs.”) There are only two exceptions provided under the MHRA to the FOAA mandate: information related to the identities of third-party witnesses (anyone who is not the complainant or respondent) and information related to settlement. That means that a complainant’s medical or disability-related information filed here to support his or her case becomes available to the public and media when a case is finished, no matter how private it may be.

This serves as a strong disincentive for people with disabilities to file complaints with the Commission, and leaves people with disabilities with an unacceptable choice to make in order to assert the rights the MHRA guarantees them. They can seek to enforce their rights under the MHRA, but only if they totally give up any right to privacy about the disability and/or medical records related to their assertion of rights. In this digital age of social media and records that live on the Internet forever, anyone can make a request under FOAA and review anyone else’s disability or medical records on file here and put them on the Internet for anyone to read. This should not be the price a person has to pay to claim rights under the MHRA.

This is not a theoretical situation – it happens in our office and around Maine every single day.

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Complaints/year	628	700	718	819	849	666	772	643	654	656
Allegations/year	909	1014	1097	1399	1132	1191	1337	1272	1266	1567
Disability allegations per year	281	308	346	467	450	438	450	445	448	581

There is another important benefit to the proposal in LD 1171 related to medical information, and that is to protect the medical information about any persons who are not parties but who are involved in our investigations, whether as witnesses or even counsel for parties. The MHRA specifically states that the identities of third parties must be kept confidential even under FOAA (5 M.R.S. § 4612(1)(B)), so when we are responding to FOAA requests we must redact voluminous records to remove the names of third parties. However, this does nothing to remove from public disclosure medical or disability information in our files related to those third parties (albeit without a person’s name on it, which we redact). Often, we have counsel who request accommodations related to their own medical conditions during our process, and we have no way to keep that information confidential. Similarly, if a respondent raises a defense that involves

comparing a complainant to other persons with medical conditions or disabilities, the comparator's medical conditions become part of the public record (with name redacted³) when our investigation is closed. In this day and age, it is often not difficult for members of the public to put clues together and to figure out the comparator's or lawyer's name and put it together with the medical information. This cannot be what the drafters of the MHRA intended.

We have considered this issue to see if there is any other avenue for claiming that individuals' medical records and disability-related information might be protected from FOAA disclosure, and do not see any approach other than what is presented in LD 1171. Although there are many, many existing exceptions to FOAA already, none of them seem to apply in this scenario. For example, 22 M.R.S. §1711-C protects health care information but that statute is directed at disclosures by a health care practitioner or facility. Similarly, the federal Health Insurance Portability and Accountability Act ("HIPAA") establishes national standards to protect individuals' medical records and other personal health information, but it applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically.

The proposals in LD 1171 are carefully tailored to ensure that respondents have a full opportunity to argue the medical or disability concerns at issue throughout our investigation process and at a Commission hearing, and to ensure that our Commissioners have the opportunity to consider the medical/disability details in deciding whether discrimination happened in a particular case. Representative Warren's proposal takes care to outline provisions allowing Commission staff, Commissioners, and parties full access to medical information (after appropriate releases are signed) and full opportunity to utilize those during the investigative and hearing processes at the Commission, and then properly makes the records confidential unless the person whose records are at issue consents in writing to their publication. Her bill also specifies that when a respondent provides the Commission with information about a witness's or other individual's medical conditions as part of its defense, the respondent must redact the name of the witness/individual before providing the information to the Commission; currently, we spend enormous amounts of staff time redacting the names of third party witnesses or other comparator individuals from respondents' documents when answering a FOAA request.

LD 1171's proposals regarding shielding medical/disability records that are part of Commission investigative files from FOAA should be enacted.

Records related to identities of minor children

The second proposal in LD 1171 is to allow the Commission to protect the identities of minor children involved in Commission complaints or cases. Just as described above with respect to medical/disability records, the identities of minor children whose parents bring complaints on behalf of their children must become public and subject to FOAA when their cases end here. Although we can utilize pseudonyms for the minors while the case is pending at the Commission, we cannot shield the identity information of the minor

³ We do also redact a few other types of personally identifiable information that other statutes or FOAA already exempt from public disclosure, such as residential addresses and Social Security numbers.

or parents once the investigation ends and the case records are subject to FOAA. In this day and age of social media, a parent's choice to bring a complaint on behalf of his or her child would go viral instantly and would live on the internet forever, following that child for a lifetime. This can be a strong disincentive for parents to assert the rights of their children, as can the unfortunate possibility that that families and students could put themselves at risk if they make claims against their schools and that becomes public information.

This, too, is not a theoretical situation. In 2015 so far, we have received 16 complaints that parents filed on behalf of their minor children. That number is not unusual, given that in prior years we received an average of 18 such complaints per year (2014=9; 2013=12; 2012=17; 2011=14; and 2010=21).

We currently have no mechanism at all to shield the names of minor children from the public under FOAA. LD 1171 would allow us to do that, and we urge you to adopt this portion of the bill as well.

Conclusion

Thank you for the opportunity to provide this testimony reflecting our strong support of LD 1171. The Maine Human Rights Commission will be glad to discuss this matter at your convenience and/or be present at the work session for further deliberation.

Sincerely,



Amy M. Sneirson
Executive Director

Cc: Maine Human Rights Commission

DISABILITY RIGHTS MAINE

April 28, 2015

Senator David Burns, Chair
Representative Barry Hobbins, Chair
Committee on Judiciary
c/o Legislative Information
100 State House Station
Augusta, ME 04333

Re: LD 1171, An Act to Protect Certain Information under the Maine Human Rights Act

Dear Chairman Burns, Chairman Hobbins and Members of the Judiciary Committee,

I appear today to offer testimony on behalf of the Disability Rights Maine (DRM), Maine's Protection and Advocacy agency for people with disabilities, on LD 1171, An Act to Protect Certain Information under the Maine Human Rights Act. For the following reasons, we urge the Committee to vote ought to pass this important and long overdue legislation.

Through its operation of multiple federal and state funded programs, DRM advocates for individuals with disabilities whose rights have been violated, who are at risk of abuse or neglect, or who have faced discrimination on the basis of their disability. DRM seeks redress where rights concerns arise related housing, education, physical access, rehabilitation, health care, community supports, and employment. Additionally, DRM works toward public policy reform through training, outreach and systemic advocacy.

As a Managing Attorney at Disability Rights Maine, I regularly represent individuals at the Maine Human Rights Commission ("the Commission"), as I have done over the course of more than fifteen years. In addition, I served as a Commissioner at the Maine Human Rights Commission from 2005-2007. Further, in 2007, I was appointed by this Committee on Judiciary to work with my colleagues who represent the business community to propose language for a new definition of disability under the Maine Human Rights Act. As some of you may recall, the new definition of disability that we proposed was voted ought to pass by this Committee and was subsequently enacted by the Maine Legislature on June 21, 2007.

Over my many years of representing complainants, working with investigators and other Commission staff, assisting individuals in fact finding and Commission hearings, as well as presiding over Commission meetings with my fellow commissioners, I have become very familiar with the workings of the Maine Human Rights Act, including what works well in the

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MAINE'S PROTECTION AND ADVOCACY AGENCY FOR PEOPLE WITH DISABILITIES

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law and what could be improved. I firmly believe that LD 1171 is long overdue and will significantly improve the workings of the Commission by (1) ensuring that investigators will have the freedom to fully and fairly investigate claims of discrimination and (2) sensitive medical records and identities of minors will be protected from becoming public record at the close of an investigation.

As you know, the Maine Human Rights Act specifically designates the Maine Human Rights Commission as the agency to investigate discrimination complaints based on disability, sex, religion or any other class designated as protected under the Act. 5 M.R.S.A. §4552. In order to carry out the purposes of the Act, the Commission must investigate all forms of discrimination and make recommended findings with regard to whether discrimination occurred. 5 M.R.S.A. §4566. In the course of its work, the Commission often must, by necessity, receive otherwise confidential records, it may subpoena records and compel parties to produce information. 5 M.R.S.A. §4566. The problem with the current statute is that almost everything in the investigator's file becomes public once an investigation is completed, no matter how sensitive or otherwise confidential a record is.

In fact, the only information collected in the course of an investigation that is designated as confidential at the conclusion of the investigation is "data identifying persons not parties to the complaint." 5 M.R.S.A. 4612(1)(B). All other information automatically becomes "a matter of public record at the conclusion of the investigation." 5 M.R.S.A. 4612(1)(B). This is particularly and most obviously difficult and problematic for complainants who have alleged disability discrimination.

All parties, in order to prove or avoid liability, are required to meet their burden of proof in bringing or defending a claim of discrimination at the Commission. For disability discrimination complainants, this often means having to disclose otherwise confidential medical records in order to show that they have a qualifying disability. For example, this might include records which prove that the complainant has a physical or mental impairment that substantially limits one or more major life activities. Individuals also are required to sign releases of information for the Commission in order to allow the investigator to obtain records from employers which may contain sensitive medical information. Commonly this may also include a detailed letter from a physician recommending reasonable accommodation based on an "invisible" disability such as bipolar disorder or HIV which has not been publicly disclosed. In instances such as these, the complainant would have to provide sensitive, otherwise confidential medical records to the investigator in order to meet their burden of proof. Under current statute, there is nothing preventing these records from automatically becoming public at the close of an investigation. LD 1171 is an effective solution to this problem.

LD 1171 protects some of the most sensitive, often otherwise confidential records from public disclosure, including identity of minors and medical records, diagnoses, medical information and other information regarding disability. Yet it strikes a reasonable balance which will allow individuals who are the subject of the records the ability to disclose the records with written authorization. In addition, LD 1171 provides specific exceptions to authorize disclosure when necessary to further the investigation and during deliberation of the complaint.

LD 1171 strikes an appropriate and fair balance between allowing free and unfettered investigation and assures that certain highly sensitive records will not automatically become public record. We respectfully urge this Committee to vote ought to pass on this important legislation.

Thank you.

Sincerely,



Kristin L. Aiello
Managing Attorney
DISABILITY RIGHTS MAINE
kaiello@drme.org

kla/st

Maine Revised Statutes

Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES

Chapter 337: HUMAN RIGHTS ACT

§4612. PROCEDURE ON COMPLAINTS

1. Predetermination resolution; investigation. Upon receipt of such a complaint, the commission or its delegated single commissioner or investigator shall take the following actions.

A. The commission or its delegated single commissioner or investigator shall provide an opportunity for the complainant and respondent to resolve the matter by settlement agreement prior to a determination of whether there are reasonable grounds to believe that unlawful discrimination has occurred. Evidence of conduct or statements made in compromise settlement negotiations, offers of settlement and any final agreement are confidential and may not be disclosed without the written consent of the parties to the proceeding nor used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of agreement filed by the commission or a party. Notwithstanding this paragraph, the commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate settlement. The commission may adopt rules providing for a 3rd-party neutral mediation program. The rules may permit one or more parties to a proceeding to agree to pay the costs of mediation. The commission may receive funds from any source for the purposes of implementing a 3rd-party neutral mediation program. [2007, c. 243, §5 (AMD) .]

B. The commission or its delegated commissioner or investigator shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred. In conducting an investigation, the commission, or its designated representative, must have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy those materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The commission may issue subpoenas to compel access to or production of those materials or the appearance of those persons, subject to section 4566, subsections 4-A and 4-B, and may serve interrogatories on a respondent to the same extent as interrogatories served in aid of a civil action in the Superior Court. The commission may administer oaths. The complaint and evidence collected during the investigation of the complaint, other than data identifying persons not parties to the complaint, is a matter of public record at the conclusion of the investigation of the complaint prior to a determination by the commission. An investigation is concluded upon issuance of a letter of dismissal or upon listing of the complaint on a published commission meeting agenda, whichever first occurs. Prior to the conclusion of an investigation, all information possessed by the commission relating to the investigation is confidential and may not be disclosed, except that the commission and its employees have discretion to disclose such information as is reasonably necessary to further the investigation. Notwithstanding any other provision of this section, the complaint and evidence collected during the investigation of the complaint may be used as evidence in any subsequent proceeding, civil or criminal. The commission must conclude an investigation under this paragraph within 2 years after the complaint is filed with the commission. [2009, c. 235, §2 (AMD) .]

[2009, c. 235, §2 (AMD) .]

2. Order of dismissal. If the commission does not find reasonable grounds to believe that unlawful discrimination has occurred, it shall enter an order so finding, and dismiss the proceeding.

[1971, c. 501, §1 (NEW) .]

3. Informal methods, conciliation. If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, but finds no emergency of the sort contemplated in subsection 4, paragraph B, it

shall endeavor to eliminate such discrimination by informal means such as conference, conciliation and persuasion. Everything said or done as part of such endeavors is confidential and may not be disclosed without the written consent of the parties to the proceeding, nor used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of agreement filed by the commission or a party. Notwithstanding this subsection, the commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate conciliation. If the case is disposed of by such informal means in a manner satisfactory to a majority of the commission, it shall dismiss the proceeding.

[2007, c. 243, §7 (AMD) .]

4. Civil action by commission.

A. If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, and further believes that irreparable injury or great inconvenience will be caused the victim of such discrimination or to members of a racial, color, sex, sexual orientation, physical or mental disability, religious or nationality group or age group if relief is not immediately granted, or if conciliation efforts under subsection 3 have not succeeded, the commission may file in the Superior Court a civil action seeking such relief as is appropriate, including temporary restraining orders. In a complaint investigated pursuant to a memorandum of understanding between the commission and the United States Department of Housing and Urban Development that results in a reasonable grounds determination, the commission shall file a civil action for the use of complainant if conciliation efforts under subsection 3 are unsuccessful. [2011, c. 613, §19 (AMD); 2011, c. 613, §29 (AFF).]

B. Grounds for the filing of such an action before attempting conciliation include, but are not limited to:

- (1) In unlawful housing discrimination, that the housing accommodation sought is likely to be sold or rented to another during the pendency of proceedings, or that an unlawful eviction is about to occur;
- (2) In unlawful employment discrimination, that the victim of the discrimination has lost or is threatened with the loss of job and income as a result of such discrimination;
- (3) In unlawful public accommodations discrimination, that such discrimination is causing inconvenience to many persons;
- (4) In any unlawful discrimination, that the victim of the discrimination is suffering or is in danger of suffering severe financial loss in relation to circumstances, severe hardship or personal danger as a result of such discrimination. [1991, c. 99, §30 (AMD) .]

[2011, c. 613, §19 (AMD); 2011, c. 613, §29 (AFF) .]

5. Confidentiality of 3rd-party records. The Legislature finds that persons who are not parties to a complaint under this chapter as a complainant or a respondent have a right to privacy. Any records of the commission that are open to the public under Title 1, chapter 13, must be kept in such a manner as to ensure that data identifying these 3rd parties is not reflected in the record. Only data reflecting the identity of these persons may be kept confidential.

[2011, c. 613, §20 (AMD); 2011, c. 613, §29 (AFF) .]

6. Right to sue. If, within 180 days of a complaint being filed with the commission, the commission has not filed a civil action in the case or has not entered into a conciliation agreement in the case, the complainant may request a right-to-sue letter, and, if a letter is given, the commission shall end its investigation.

[1995, c. 462, Pt. A, §7 (AMD) .]

SECTION HISTORY

1971, c. 501, §1 (NEW). 1973, c. 347, §13 (AMD). 1973, c. 415, §2 (AMD). 1973, c. 625, §37 (AMD). 1973, c. 705, §11 (AMD). 1973, c. 788, §28 (AMD). 1975, c. 358, §15 (AMD). 1977, c. 648, §2 (AMD). 1981, c. 6, (AMD). 1983, c. 281, §§1,2 (AMD). 1985, c. 585, §§1,2 (AMD). 1991,

PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE

Maine Freedom of Access Act - public records exceptions

Enacted 2005 - 2012

(Revised 8/16/2016)

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
1	1	402	2	Title 1, section 402, subsection 2, paragraph G, relating to committee meetings pertaining to interscholastic sports	Maine Principal's Association - Interscholastic Management Committee	Indefinitely postpone because MPA is not a public body	
2	1	402	3	Title 1, section 402, subsection 3, paragraph C-1, relating to legislative working papers	Legislative Council, Executive Director		
3	1	402	3	Title 1, section 402, subsection 3, paragraph N, relating to Social Security Numbers	Department of Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive Director; Administrative Office of the Courts	No Modification	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
4	1	402	3	Title 1, section 402, subsection 3, paragraph O, relating to personal contact information concerning public employees other than elected officials	Department of Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive Director; Administrative Office of the Courts	No Modification	
5	1	402	3	Title 1, section 402, subsection 3, paragraph P, relating to geographic information regarding recreational trails on private land	Department of Inland Fisheries and Wildlife; Department of Agriculture, Conservation and Forestry	No Modification	No Modification
6	1	402	3	Title 1, section 402, subsection 3, paragraph Q, relating to security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events for Department of Corrections or county jail	Department of Corrections		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
7	1	402	3	Title 1, section 402, subsection 3, paragraph R, relating to Social Security numbers in possession of the Secretary of State	Secretary of State	No Modification	
8	1	538	3	Title 1, section 538, subsection 3, relating to InforME subscriber information	Information Resources of Maine (InforME)	No Modification	No Modification
9	1	1013	2	Title 1, section 1013, subsection 2, relating to the identity of a requestor of Commission on Governmental Ethics and Election Practices opinions	Commission on Governmental Ethics and Election Practices	No Modification	
10	1	1013	4	Title 1, section 1013, subsection 4, relating to Commission on Governmental Ethics and Election Practices records other than complaints	Commission on Governmental Ethics and Election Practices	No Modification	
11	1	1013	3-A	Title 1, section 1013, subsection 3-A, relating to complaint alleging a violation of legislative ethics	Commission on Governmental Ethics and Election Practices	No Modification	
12	4	1806		Title 4, section 1806, relating to certain information and records in the possession of the Maine Commission on Indigent Legal Services	Maine Commission on Indigent Legal Services	No Modification	No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
13	5	1541	10-B	Title 5, section 1541, subsection 10-B, relating to internal audit working papers of the State Controller	Department of Administrative and Financial Services - Office of the State Controller		
14	5	17057	3	Title 5, section 17057, subsection 3, relating to home contact information of Maine Public Employees Retirement System members, benefit recipients and staff	Maine Public Employees Retirement System	No Modification	No Modification
15	5	17057	4	Title 5, section 17057, subsection 4, relating to Maine Public Employees Retirement System private market investment activity	Maine Public Employees Retirement System	No Modification	No Modification
16	5	17057	5	Title 5, section 17057, subsection 3, relating to Maine Public Employees Retirement System employees personal and complaint and disciplinary information	Maine Public Employees Retirement System	No Modification	No Modification
17	5	90-B	7	Title 5, section 90-B, subsection 7, relating to the Address Confidentiality Program	Secretary of State	No Modification	No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
18	7	1052	2-A	Title 7, section 1052, subsection 2-A, relating to total potential acreage of genetically modified crops reported by individual manufacturers	Department of Agriculture, Conservation and Forestry	No Modification	No Modification
19	7	2231	3	Title 7, section 2231, subsection 3, relating to criminal history records provided to the Commissioner of Agriculture, Conservation and Forestry as part of an application to grow industrial hemp for commercial purposes	Department of Agriculture, Conservation and Forestry	Repealed by PL 2009, ch. 320, section 1	
20	8	1006	1	Title 8, section 1006, subsection 1, paragraph A, relating to information or records required by the Gambling Control Board for licensure: trade secrets and proprietary information	Department of Public Safety	No Modification	No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
21	8	1006	1	Title 8, section 1006, subsection 1, paragraph B, relating to information or records required by the Gambling Control Board for licensure: would be unwarranted invasion of privacy of key executive, gaming employee or another person	Department of Public Safety	No Modification	No Modification
22	8	1006	1	Title 8, section 1006, subsection 1, paragraph C, relating to information or records required by the Gambling Control Board for licensure: key executive or gaming employee compensation	Department of Public Safety	No Modification	No Modification
23	8	1006	1	Title 8, section 1006, subsection 1, paragraph D, relating to information or records required by the Gambling Control Board for licensure: financial, statistical and surveillance information related to the applicant	Department of Public Safety	No Modification	No Modification

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
24	8	1006	1	Title 8, section 1006, subsection 1, paragraph E, relating to information or records required by the Gambling Control Board for licensure: creditworthiness, credit rating or financial condition of person or project	Department of Public Safety	No Modification	No Modification
25	8	1006	1	Title 8, section 1006, subsection 1, paragraph F, relating to information or records required by the Gambling Control Board for licensure: information from other jurisdictions conditioned on remaining confidential	Department of Public Safety	No Modification	No Modification
26	8	1006	1	Title 8, section 1006, subsection 1, paragraph G, relating to information or records required by the Gambling Control Board for licensure: information designated confidential under federal law	Department of Public Safety	No Modification	No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
27	8	1006	1	Title 8, section 1006, subsection 1, paragraph H, relating to information or records required by the Gambling Control Board for licensure: specific personal information, including Social Security number, of any individual	Department of Public Safety	No Modification	No Modification
28	8	1006	3	Title 8, section 1006, subsection 3, relating to records and information developed as part of suitability requirement to select operator of central site monitoring system, held by Gambling Control Board and Dept. of Public Safety	Department of Public Safety	No Modification	No Modification
29	8	1006	4	Title 8, section 1006, subsection 4, relating to financial, statistical and surveillance information from the central site monitoring system held by the Gambling Control Board and the Dept. of Public Safety	Department of Public Safety	No Modification	No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
30	8	1007	2	Title 8, section 1007, subsection 2, relating to information or records received by the Gambling Control Board or Department of Public Safety from another agency pursuant to agreement	Department of Public Safety	No Modification	No Modification
31	8	1008		Title 8, section 1008, relating to information or records used or produced by the Gambling Control Board or Department of Public Safety in connection with hearings, proceedings or appeals pursuant to Title 8, section 1052	Department of Public Safety	No Modification	No Modification
32	8	1052		Title 8, section 1052, relating to reports, information or records compiled by the Gambling Control Board and Dept. of Public Safety concerning noncompliance with or violation of the chapter by an applicant, licensee, owner or key executive	Department of Public Safety	No Modification	No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
33	8	270-A		Title 8, section 270-A, relating to records and information included in application or materials required for issuance of commercial track license	Department of Agriculture, Conservation and Forestry	No Modification	No Modification
34	9-A	6-105-A		Title 9-A, section 6-105-A, last paragraph, relating to information concerning uniform multistate licensing system provided to Consumer Credit Protection by other jurisdictions	Department of Professional and Financial Regulation - Bureau of Consumer Credit Protection	No Modification	No Modification
35	12	8005	1	Title 12, section 8005, subsection 1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	Department of Agriculture, Conservation and Forestry	No Modification	No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
36	12	8005	2	Title 12, section 8005, subsection 2, relating to Social Security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs	Department of Agriculture, Conservation and Forestry		
37	12	8005	4	Title 12, section 8005, subsection 4, relating to forest management information designated confidential by agency furnishing the information	Department of Agriculture, Conservation and Forestry		
38	12	10110		Title 12, section 10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license	Department of Inland Fisheries and Wildlife		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
39	12	12551-A	10	Title 12, section 12551-A, subsection 10, relating to smelt dealers reports, including name, location, gear and catch	Department of Inland Fisheries and Wildlife		
40	14	6321-A	4	Title 14, section 6321-A, subsection 4, relating to the financial information disclosed in the course of mediation under the foreclosure mediation program	Administrative Office of the Courts		
41	17-A	1176	1	Title 17-A, section 1176, subsection 1, relating to information that pertains to current address or location of crime victims	Department of Public Safety		
42	17-A	1176	5	Title 17-A, section 1176, subsection 5, relating to request by crime victim for notice of release of defendant	Department of Corrections		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
43	20-A	13004	2-A	Title 20-A, section 13004, subsection 2-A, relating to complaints, charges and accusations concerning certification and registration of educational personnel	Department of Education		
44	21-A	1003	3-A	Title 21-A, section 1003, subsection 3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices	Maine Commission on Governmental Ethics and Election Practices	No Modification	
45	21-A	1125	3	Title 21-A, section 1125, subsection 3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices	No Modification	
46	21-A	1125	2-B	Title 21-A, section 1125, subsection 2-B, relating to records of individuals who made Clean Elections gubernatorial seed money contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices	Indefinitely postpone because citizen's initiation repeals this exception	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
47	21-A	196-A		Title 21-A, section 196-A, relating to information contained electronically in the central voter registration system	Secretary of State	No Modification	
48	22	1494		Title 22, section 1494, relating to occupational disease reporting	Department of Health and Human Services	No Modification	No Modification
49	22	2425	8	Title 22, section 2425, subsection 8, relating to medical marijuana registry identification cards	Department of Health and Human Services	No Modification	
50	22	1711-C	20	Title 22, section 1711-C, subsection 20, relating to hospital records concerning health care information pertaining to an individual	HealthInfoNet	Repeal exception because information purportedly protected is already protected and HealthInfoNet not subject to FOAA	
51	22	2153-A		Title 22, section 2153-A, relating to information provided to the Department of Health and Human Services by the U.S. Department of Agriculture and the U.S. Food and Drug Administration that is confidential under federal law	Department of Health and Human Services		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
52	22	4087-A	6	Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman	Child Welfare Ombudsman	No Modification	
53	24-A	2736	2	Title 24-A, section 2736, subsection 2, relating to insurer rate filings on individual health insurance policies and supporting information, in regards to protected health information and descriptions of the amount and terms or conditions or reimbursement in a contract between an insurer and a 3rd party	Department of Professional and Financial Regulation - Bureau of Insurance	Review not necessary; not a new PR exception	
54	25	4202		Title 25, section 4202, relating to records and information connected in any way with the work of a critical incident stress management team for law enforcement personnel	Department of Public Safety		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
55	29-A	1301	6-A	Title 29-A, section 1301, relating to the social security number of an applicant for a driver's license or nondriver identification card	Secretary of State	No Modification	
56	29-A	2251	7-A	Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in an accident report database	Department of Public Safety		
57	29-A	2117-A	4	Title 29-A, section 2117-A, relating to data collected or retained through the use of an automated license plate recognition system	Department of Public Safety; Department of Transportation		
58	32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	Department of Public Safety		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
59	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board	Department of Public Safety		
60	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to information about a person receiving emergency medical services as part of an application for credentialing by Emergency Medical Services Board	Department of Public Safety		
61	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to the trauma incidence registry under section 87-B	Department of Public Safety		
62	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board	Department of Public Safety		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
63	30-A	4706	1	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities	Maine State Housing Authority (MaineHousing)	No Modification	
64	34-A	11221	13	Title 34-A, section 11221, subsection 13, relating to disclosure of certain sex offender registry information	Department of Public Safety		
65	34-A	11221	9-A	Title 34-A, section 11221, subsection 9-A, relating to certain sex offender registry information	Department of Public Safety		
66	34-B	1931	6	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board	Mental Health Homicide, Suicide, and Aggravated Assault Review Board (MHHSAAARB)		
67	34-B	3864	12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	Department of Public Safety		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
68	35-A	122	1-B	Title 35-A, section 122, subsection 1-B, paragraph G, relating to information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use in the context of energy infrastructure corridors	Interagency Review Panel (Governor's Energy Office)	No Modification	
69	35-A	10106		Title 35-A, section 10106 relating to records of the Efficiency Maine Trust and its board	Efficiency Maine		
70	36	6271	2	Title 36, section 6271, subsection 2, relating to an application, information submitted in support of an application and files and communications in relation to a municipal property tax deferral program for senior citizens	Maine Municipal Association	No Modification	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE RECOMMENDATION
71	38	1310-B	2	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	Department of Environmental Protection	No Modification	
72	38	580-B	11	Title 38, section 580-B, subsection 11, relating to records held by the Department of Environmental Protection or its agents regarding individual auctions administered under the carbon dioxide cap-and-trade program	Department of Environmental Protection	No Modification	

Maine Revised Statutes
Title 1: GENERAL PROVISIONS
Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

§403. MEETINGS TO BE OPEN TO PUBLIC; RECORD OF MEETINGS

1. Proceedings open to public. Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.

[2011, c. 320, Pt. C, §1 (NEW) .]

2. Record of public proceedings. Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made within a reasonable period of time after the proceeding and must be open to public inspection. At a minimum, the record must include:

A. The date, time and place of the public proceeding; [2011, c. 320, Pt. C, §1 (NEW) .]

B. The members of the body holding the public proceeding recorded as either present or absent; and [2011, c. 320, Pt. C, §1 (NEW) .]

C. All motions and votes taken, by individual member, if there is a roll call. [2011, c. 320, Pt. C, §1 (NEW) .]

[2011, c. 320, Pt. C, §1 (NEW) .]

3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.

[2011, c. 320, Pt. C, §1 (NEW) .]

4. Maintenance of record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.

[2011, c. 320, Pt. C, §1 (NEW) .]

5. Validity of action. The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.

[2011, c. 320, Pt. C, §1 (NEW) .]

6. Advisory bodies exempt from record requirements. Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.

[2011, c. 320, Pt. C, §1 (NEW) .]

SECTION HISTORY

1969, c. 293, (AMD). 1975, c. 422, §1 (AMD). 1975, c. 758, (RPR).
2009, c. 240, §1 (AMD). 2011, c. 320, Pt. C, §1 (RPR).

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Maine Revised Statutes
Title 1: GENERAL PROVISIONS
Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

§405. EXECUTIVE SESSIONS

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions. [1975, c. 758, (NEW).]

1. Not to defeat purposes of subchapter. An executive session may not be used to defeat the purposes of this subchapter as stated in section 401.

[2009, c. 240, §2 (AMD) .]

2. Final approval of certain items prohibited. An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at an executive session.

[2009, c. 240, §2 (AMD) .]

3. Procedure for calling of executive session. An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.

[2009, c. 240, §2 (AMD) .]

4. Motion contents. A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent.

[2003, c. 709, §1 (AMD) .]

5. Matters not contained in motion prohibited. Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.

[2009, c. 240, §2 (AMD) .]

6. Permitted deliberation. Deliberations on only the following matters may be conducted during an executive session:

A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:

- (1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the individual's reputation or the individual's right to privacy would be violated;
- (2) Any person charged or investigated must be permitted to be present at an executive session if that person so desires;

(3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against that person be conducted in open session. A request, if made to the agency, must be honored; and

(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.

This paragraph does not apply to discussion of a budget or budget proposal; [2009, c. 240, §2 (AMD) .]

B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, as long as:

(1) The student and legal counsel and, if the student is a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire; [2009, c. 240, §2 (AMD) .]

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency; [1987, c. 477, §3 (AMD) .]

D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions; [1999, c. 144, §1 (RPR) .]

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage; [2009, c. 240, §2 (AMD) .]

F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute; [1999, c. 180, §1 (AMD) .]

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and [1999, c. 180, §2 (AMD) .]

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter. [1999, c. 180, §3 (NEW) .]

[2009, c. 240, §2 (AMD) .]

SECTION HISTORY

1975, c. 758, (RPR). 1979, c. 541, §A3 (AMD). 1987, c. 477, §§2,3 (AMD). 1987, c. 769, §A1 (AMD). 1999, c. 40, §§1,2 (AMD). 1999, c. 144, §1 (AMD). 1999, c. 180, §§1-3 (AMD). 2003, c. 709, §1 (AMD). 2009, c. 240, §2 (AMD) .

Maine Revised Statutes
Title 1: GENERAL PROVISIONS

Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

§407. DECISIONS

1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to appraise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.

[1975, c. 758, (NEW) .]

2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof must be kept by the agency and made available to any interested member of the public who may wish to review it.

[2009, c. 240, §3 (AMD) .]

SECTION HISTORY

1975, c. 758, (NEW) . 2009, c. 240, §3 (AMD) .

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Maine Revised Statutes
Title 1: GENERAL PROVISIONS
Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

§409. APPEALS

1. Records. Any person aggrieved by a refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record under section 408-A may appeal the refusal, denial or failure within 30 calendar days of the receipt of the written notice of refusal, denial or failure to the Superior Court within the State for the county where the person resides or the agency has its principal office. The agency or official shall file a statement of position explaining the basis for denial within 14 calendar days of service of the appeal. If a court, after a review, with taking of testimony and other evidence as determined necessary, determines such refusal, denial or failure was not for just and proper cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[2015, c. 249, §2 (AMD) .]

2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[2011, c. 559, Pt. A, §2 (AMD) .]

3. Proceedings not exclusive. The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.

[2009, c. 240, §6 (AMD) .]

4. Attorney's fees. In an appeal under subsection 1 or 2, the court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.

This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.

[2009, c. 423, §1 (NEW) .]

SECTION HISTORY

1975, c. 758, (NEW). 1987, c. 477, §5 (AMD). 2007, c. 695, Pt. C, §1 (AMD). 2009, c. 240, §§5, 6 (AMD). 2009, c. 423, §1 (AMD). 2011, c. 559, Pt. A, §§1, 2 (AMD). 2011, c. 662, §6 (AMD). 2013, c. 350, §3 (AMD). 2015, c. 249, §2 (AMD).

Maine Revised Statutes
Title 1: GENERAL PROVISIONS
Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

§408-A. PUBLIC RECORDS AVAILABLE FOR INSPECTION AND COPYING

* [Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record. [2011, c. 662, §5 (NEW) .]

1. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge a fee for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee as provided in subsection 8.

[2011, c. 662, §5 (NEW) .]

2. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. The agency or official may charge a fee for copies as provided in subsection 8.

A. A request need not be made in person or in writing. [2011, c. 662, §5 (NEW) .]

B. The agency or official shall mail the copy upon request. [2011, c. 662, §5 (NEW) .]

[2011, c. 662, §5 (NEW) .]

* { **3. Acknowledgment; clarification; time estimate; cost estimate.** The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within 5 working days of receiving the request and may request clarification concerning which public record or public records are being requested. Within a reasonable time of receiving the request, the agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request, as well as a cost estimate as provided in subsection 9. The agency or official shall make a good faith effort to fully respond to the request within the estimated time. For purposes of this subsection, the date a request is received is the date a sufficient description of the public record is received by the agency or official at the office responsible for maintaining the public record. An agency or official that receives a request for a public record that is maintained by that agency but is not maintained by the office that received the request shall forward the request to the office of the agency or official that maintains the record, without willful delay, and shall notify the requester that the request has been forwarded and that the office to which the request has been forwarded will acknowledge receipt within 5 working days of receiving the request.

[2015, c. 317, §1 (AMD) .]

4. (CONFLICT: Text as amended by PL 2015, c. 248, §1) Refusals; denials. If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide written notice of the denial, stating the reason for the denial, within 5 working days of the receipt of the request for inspection or copying. A request for inspection or copying may be denied, in whole or in part, on the basis that the request is unduly burdensome or oppressive if the procedures established in subsection 4-A are followed. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

[2015, c. 248, §1 (AMD) .]

4. (CONFLICT: Text as amended by PL 2015, c. 249, §1) **Refusals; denials.** If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide, within 5 working days of the receipt of the request for inspection or copying, written notice of the denial, stating the reason for the denial or the expectation that the request will be denied in full or in part following a review. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

[2015, c. 249, §1 (AMD) .]

4-A. Action for protection. A body, an agency or official may seek protection from a request for inspection or copying that is unduly burdensome or oppressive by filing an action for an order of protection in the Superior Court for the county where the request for records was made within 30 days of receipt of the request.

A. The following information must be included in the complaint if available or provided to the parties and filed with the court no more than 14 days from the filing of the complaint or such other period as the court may order:

- (1) The terms of the request and any modifications agreed to by the requesting party;
- (2) A statement of the facts that demonstrate the burdensome or oppressive nature of the request, with a good faith estimate of the time required to search for, retrieve, redact if necessary and compile the records responsive to the request and the resulting costs calculated in accordance with subsection 8;
- (3) A description of the efforts made by the body, agency or official to inform the requesting party of the good faith estimate of costs and to discuss possible modifications of the request that would reduce the burden of production; and
- (4) Proof that the body, agency or official has submitted a notice of intent to file an action under this subsection to the party requesting the records, dated at least 10 days prior to filing the complaint for an order of protection under this subsection. [2015, c. 248, §2 (NEW) .]

B. Any appeal that may be filed by the requesting party under section 409 may be consolidated with an action under this subsection. [2015, c. 248, §2 (NEW) .]

C. An action for protection may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require upon the request of any party. [2015, c. 248, §2 (NEW) .]

D. If the court finds that the body, agency or official has demonstrated good cause to limit or deny the request, the court shall enter an order making such findings and establishing the terms upon which production, if any, must be made. If the court finds that the body, agency or official has not demonstrated good cause to limit or deny the request, the court shall establish a date by which the records must be provided to the requesting party. [2015, c. 248, §2 (NEW) .]

[2015, c. 248, §2 (NEW) .]

5. Schedule. Inspection, conversion pursuant to subsection 7 and copying of a public record subject to a request under this section may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody or control of the public record requested. If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists.

[2011, c. 662, §5 (NEW) .]

6. No requirement to create new record. An agency or official is not required to create a record that does not exist.

[2011, c. 662, §5 (NEW) .]

7. Electronically stored public records. An agency or official having custody or control of a public record subject to a request under this section shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

A. If in order to provide access to an electronically stored public record the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format for inspection or copying, the agency or official may charge a fee to cover the cost of conversion as provided in subsection 8. [2011, c. 662, §5 (NEW) .]

B. This subsection does not require an agency or official to provide a requester with access to a computer terminal. [2011, c. 662, §5 (NEW) .]

[2011, c. 662, §5 (NEW) .]

8. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying. [2011, c. 662, §5 (NEW) .]

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information. [2011, c. 662, §5 (NEW) .]

C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format. [2011, c. 662, §5 (NEW) .]

D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies. [2011, c. 662, §5 (NEW) .]

E. The agency or official may charge for the actual mailing costs to mail a copy of a record. [2011, c. 662, §5 (NEW) .]

[2011, c. 662, §5 (NEW) .]

9. Estimate. The agency or official having custody or control of a public record subject to a request under this section shall provide to the requester an estimate of the time necessary to complete the request and of the total cost as provided by subsection 8. If the estimate of the total cost is greater than \$30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 10 applies.

[2011, c. 662, §5 (NEW) .]

10. Payment in advance. The agency or official having custody or control of a public record subject to a request under this section may require a requester to pay all or a portion of the estimated costs to complete the request prior to the search, retrieval, compiling, conversion and copying of the public record if:

A. The estimated total cost exceeds \$100; or [2011, c. 662, §5 (NEW) .]

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner. [2011, c. 662, §5 (NEW).]

[2011, c. 662, §5 (NEW) .]

* [**11. Waivers.** The agency or official having custody or control of a public record subject to a request under this section may waive part or all of the total fee charged pursuant to subsection 8 if:

A. The requester is indigent; or [2011, c. 662, §5 (NEW).]

B. The agency or official considers release of the public record requested to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. [2011, c. 662, §5 (NEW).]

[2011, c. 662, §5 (NEW) .]

SECTION HISTORY

2011, c. 662, §5 (NEW). 2013, c. 350, §§1, 2 (AMD). 2015, c. 248, §§1, 2 (AMD). 2015, c. 249, §1 (AMD). 2015, c. 317, §1 (AMD).

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State public record laws:
Distinctions based on requestor type or purpose

- Maine
 - An agency may request clarification concerning which public record or public records are being requested. 1 MRSA §408-A(3)
 - An agency may waive fees if the requestor is indigent or the agency considers release of the records to be in the public interest and not primarily in the commercial interest of the requestor. 1 MRSA §408-A(11)

- Arizona
 - When a requestor requests public records for a commercial purpose, they must submit a statement setting forth the commercial purpose for which the records will be used. If the request is determined to be a misuse of public records, the custodian of records may apply to the Governor requesting that the Governor by executive order prohibit the furnishing of the requested records.
 - If a person obtains a public record for a commercial purpose without indicating the actual commercial purpose, or obtains a public record for a noncommercial purpose and uses it or allows someone else to use the record for a commercial purpose, the person may be liable to the agency for damages in the amount of three times the amount of actual damages, if it can be shown that the public record would not have been provided had the commercial purpose of actual use been stated at the time of obtaining the record.

- District of Columbia
 - The fee schedules that may be adopted by a public body vary depending on the purpose of the request (e.g. commercial) and the identity of the requester (e.g., news media).

- Illinois
 - For commercial requests, the public body may charge up to \$10 for each hour spent by personnel in searching for and retrieving a requested record or examining the record for necessary redactions, if in excess of 8 hours.
 - Documents must be furnished without charge or at a reduced charge if the person requesting the documents states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest.

- Kentucky
 - The public records custodian may require a written application, signed by the applicant and with his or her name printed legibly on the application, describing the records to be inspected/copied.
 - The public agency may not require a person requesting records for a noncommercial purpose to state their exact purpose for requesting the records
 - When a person requests public records for a commercial purpose, the public agency may require a certified statement stating the commercial purpose for which the records shall be used and may charge a special fee

- It is unlawful to obtain a public record for a commercial purpose without indicating the commercial purpose (if required by agency), using the record for a different commercial purpose than stated, or obtaining a record for a noncommercial purpose and then allowing it to be used for a commercial purpose
- A requestor who misuses public records (per above) may be liable for damages to the public agency for three times the amount that would have been charged for the public record if the actual commercial purpose for which it was obtained or used had been stated, costs, reasonable attorney's fees and any other penalty established by law
- New York
 - The release of lists of names may be denied if such lists are to be used for commercial or fundraising purposes.
- Ohio
 - The Bureau of Motor Vehicles is permitted to charge additional fees for responding to commercial requests that seek 1) copies of a record or information in a format other than the format already available, or information that cannot be extracted without examining all items in a database or class of records and 2) the requester intends to use or forward the copies for surveys, marketing, solicitation or resale for commercial purposes.
- Oklahoma
 - If a public records request is made solely for a commercial purpose, the agency can charge a reasonable fee to recover the direct cost of the document search.
- Oregon
 - The identity and motive of the person requesting a public record may be relevant when the record is subject to a conditional public records exemption, which requires a determination of the public interest in disclosure of the record (e.g., trade secrets, records pertaining to pending litigation, etc.).
- South Carolina
 - A person requesting records relating to the registration and licensing of motor vehicles must submit his or her name and address, state the reason for the request, and must certify that the requested information will not be used for a purpose related to telephone marketing or solicitation
 - A person requesting records related to state-collected personal information may be required to state their intended use of the records because state-collected personal information is prohibited from being used for commercial solicitation
 - A person who uses personal information obtained from a public records request for commercial solicitation commits a misdemeanor and may be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year

- Texas
 - A public agency is specifically prohibited from making any inquiry of a requestor other than 1) to establish the requestor's proper identification, 2) to clarify a request if the governmental body is unclear and 3) to discuss the request with the requestor if the scope of the request could be narrowed if a large amount of information has been requested.
 - An agency does not need to comply with requests from individuals who are incarcerated or their agents (other than the individual's attorney)
- Virginia
 - Agency may require the requestor to provide their name and legal address
 - Incarcerated people are prohibited from requesting records
- Washington
 - Agencies are prohibited from selling or providing lists of individuals for commercial purposes
 - Applies to requests from commercial entities, but not to those from governmental entities
 - Lists of professional licensees and applicants must be made available to those professional associations or educational organizations recognized by their professional licensing or examination board
 - An incarcerated person may be enjoined from obtaining records if it is determined that the request was made to harass or intimidate a public agency or employee, would assist criminal activity, or if the request would threaten the security of a correctional facility or any person.
- Wisconsin
 - Requestor may be required to confirm identity if requesting a record that has personally identifiable information pertaining to the requestor
 - Incarcerated persons or persons involuntarily committed to a mental institution are generally prohibited from requesting records (unless the record contains specific references to the individual or the individual's minor child over whom the individual has not been denied rights)

NOTICE OF PUBLIC HEARING

The Right to Know Advisory Committee will hold a public hearing at the following time and place:

September 14, 2016, 10:00 am
Room 438, State House
Augusta, ME 04333

The purpose of the hearing is to take comments and suggestions about how the Freedom of Access Act is working and how it might be improved, consistent with its goals of giving citizens adequate access to records and meetings of decision making bodies of government.

Maine's Right to Know Advisory Committee serves as a resource for ensuring compliance with the law and responsibility for a broad range of activities to advance the purposes and principles underlying Maine's Freedom of Access Act. The Freedom of Access Act, which can be found at Title 1, chapter 13 of the Maine Revised Statutes, states the Legislature's intent that public proceedings exist to aid in the conduct of the people's business, that government actions be taken openly, and that the records of government actions be open to public inspection and deliberations be conducted openly. The law provides the public with the right to inspect and copy public records and imposes requirements on government bodies who have received such a request, as well as requiring that bodies of government conduct their meetings in public. The law also provides specific exceptions that allow State and local government bodies to keep certain records or information confidential, or to have executive sessions that are not open to the public during meetings that are otherwise public.

The Advisory Committee requests testimony on the following topic:

Considering the sensitive nature of certain information held by government entities, how could public access to government meetings and records be improved?

Written comments may be submitted to:

Craig T. Nale
Office of Policy and Legal Analysis
Cross Office Building, Room 215
13 State House Station
Augusta, ME 04333
craig.nale@legislature.maine.gov

If you plan to testify at the public hearing or to submit comments, the Right to Know Advisory Committee requests that your testimony or comments relate to the following general questions:

- How did you learn about the rights provided in the Freedom of Access Act?
- Did you have questions about how to make a request for a public record, and if so, how did you get answers to them?
- What were you surprised to learn when you made a request for a public record?
- If an issue arose that affected your ability to obtain a public record, how did you attempt to resolve that issue?
- If you are a member of a government body, how does your understanding of the requirements of the Freedom of Access Act differ from the expectations of those making public records requests?
- If you are a member of a government body, do the requirements of the Freedom of Access Act allow you to accomplish your government duties and comply with existing public access requirements and procedures?

This hearing is not a forum for the resolution of specific complaints about meetings or records. The Right to Know Advisory Committee asks that your testimony and comments do not question the motives of others or seek resolution of a particular dispute. Depending upon attendance, the Advisory Committee may limit testimony to a certain duration.



FOR RTKAC Review 8/17/16
Submitted by Nicole Clegg, PPNNE

To: Members of the Maine Right to Know Advisory Committee:

From: Nicole Clegg, VP Public Policy

Date: August 16, 2016

Re: Protections for the personal information of licensed practitioners

Thank you for the opportunity to provide additional information regarding freedom of information requests of licensed practitioners and the security risks they present PPNNE practitioners.

In conversations with our security personnel for Planned Parenthood Federation of America (PPFA) and its affiliates, I learned that the security risks our Maine health care practitioners face are not unique. In fact, the use of freedom of information requests to collect personal information that can be used to harass or intimidate health care providers is pervasive with thousands of records having been released to unknown entities. This information is often posted in hostile contexts online. An example, <http://abortiondocs.org/search-results/?state=ME>, includes multiple license files of Maine medical practitioners that were released through freedom of information requests.

State courts have also had to weigh in on this issue including recent cases in New Hampshire, Maryland and Washington, where the courts determined that the risks were great enough to protect the information.

In a statement to the court in Washington (attached), Ellen Gertzog, PPFA's National Director of Affiliate Security outlined those risks:

Planned Parenthood employees also experience invasion of their privacy and threats to their sense of safety by having personal information posted online. There are many websites where anti-abortion activists not only post photographs of staff members, but also of their cars and homes, sometimes with addresses, license plate numbers, and private phone numbers, leaving these employees vulnerable to harassment in their homes and neighborhoods. These websites implicitly encourage activism against these providers and cause employees to be afraid for their own safety and that of their families.

While I did not look at all fifty states in my research I found that when personal information is protected by a state, it is generally done in one of four ways: (1) statutes limiting the information licensing boards can share; (2) address confidentiality program; (3) exempting information from the information required for disclosure under the state's public information act; and (4) prohibiting publication of personal information of certain persons on the internet.

Of the examples, in my opinion, Maryland's law provides the best example of providing protections for licensed professionals while still making appropriate information public (attached).

Maryland has a provision in its Public Information Act requiring custodians to deny inspection of the portions of public records that contain information about "the licensing of an individual in an occupation or a profession," but requires allowing access to specified information, including the name of the licensee, the business address or home address if the business address is unavailable (after redacting any information that identifies the location as the home address), the educational and occupational background of the licensee, the professional qualifications of the licensee, any orders and findings that result from formal disciplinary actions, and "any evidence that has been provided to the custodian to meet the requirements of a statute as to financial responsibility."¹ Record custodians may allow inspection of other information about a licensee if "the custodian finds a compelling public purpose" and "the rules or regulations of the official custodian allow the inspection."² Inspection is also required by a "person in interest," which in most circumstances is the person who is the subject of the public record.³ For physicians and nurses, the effect of this law is to prohibit members of the public from accessing licensing records except for the specified information, unless the board of medicine or board of nursing promulgates rules to permit inspection of other records.

If the Maine legislature were to pursue a similar policy, I would suggest in the interest of efficiency and consistency, a public disclosure form be developed that could be provided when a freedom of information request is made. The form would be completed by the license applicant and would include the information the legislature has determined is public. When public disclosure requests are made, this form could be provided rather than redacting fifty or more pages in a license file, which has proven problematic.

California has approached the issue differently with a program that allows reproductive health care providers, patients, and volunteers to use a state-designated address in nearly all public records as a means of concealing their personal addresses from the public.⁴ This law is an extension of a similar program for victims of certain crimes such as domestic violence, stalking, and trafficking that allows victims to keep their personal addresses out of public records. Thirty-five states have some form of address confidentiality program for victims of such crimes.⁵ California extends the protection to reproductive health care providers.

Under the program, the California Secretary of State (SOS) provides participants with an address that they can use for official purposes.⁶ Participants can request that state and local agencies use the SOS address for them when creating or modifying a public record, except it cannot be used to modify a birth, fetal death, death, or marriage record.⁷ State and local

¹ Md. Gen. Provis. § 4-333.

² *Id.*

³ Md. Gen. Provis § 4-101(g).

⁴ See Cal. Gov't Code § 6215 et seq.

⁵ Missouri Secretary of State, *Address Confidentiality Programs by State*, available at <http://www.sos.mo.gov/business/SafeAtHome/AddressConfidentialityProgramsByState>.

⁶ Cal. Gov't Code § 6215.2(1).

⁷ Cal. Gov't Code § 6215.5(a), (b).

agencies are required to accept the SOS address when creating or modifying a public record, unless the SOS determines (1) the agency is required by statute or regulation to use the confidential address and (2) the address will only be used for those statutory/regulatory purposes and won't be publically disseminated.⁸ The SOS is required to forward all first-class mail and all mail sent by a government agency to participants.⁹

Another way that states can protect the personal information of individuals is to include exemptions for that information in their public information laws. For example, several states include exemptions for the personal information of law enforcement officers and/or elected officials in their freedom of information laws.¹⁰ This typically includes at least their address and telephone number, but in some cases includes photographs¹¹ and/or the names of family members.¹² A few states have exemptions for the personal information about emergency medical technicians¹³ and information contained in gun permit records and/or applications for gun permits.¹⁴

I would be happy to discuss these options at the next meeting.

⁸ *Id.*

⁹ Cal. Gov't Code § 6215.5(e).

¹⁰ *See, e.g.*, Idaho Code Ann. § 74-106; Tex. Gov't Code § 552.117; Fla. Stat. Ann. § 119.071(4)(d)(2)(a)(I); Mich. Comp. Laws Ann. § 15.243(1)(s); Or. Rev. Stat. Ann. § 192.501(31); W. Va. Code Ann. § 29B-1-4(a)(21).

¹¹ *See, e.g.*, Fla. Stat. Ann. § 119.071(4)(d)(2)(a)(I).

¹² *See, e.g.*, Mich. Comp. Laws Ann. § 15.243(1)(s).

¹³ *See, e.g.*, Fla. Stat. Ann. § (o)(exempting from disclosure "the home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under [Florida law]; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics" if the emergency medical technicians or paramedics have "made reasonable efforts to protect such information from being accessible through other means available to the public."

¹⁴ *See* Kelsey M. Swanson, *The Right to Know: An Approach to Gun Licenses and Public Access to Government Records*, 56 UCLA L. Rev. 1579, 1628 (2009).

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

JANE AND JOHN DOES 1 - 10,
individually and on behalf of others
similarly situated,

Plaintiffs,

v.

UNIVERSITY OF WASHINGTON, a
Washington public corporation; DAVID
DALEIDEN, an individual; and ZACHARY
FREEMAN, an individual;

Defendants.

No.
DECLARATION OF ELLEN GERTZOG

I, ELLEN GERTZOG, state and declare as follows:

1. I am the National Director for Affiliate Security at Planned Parenthood Federation of America ("PPFA"). I make this declaration based on personal knowledge, and if called and sworn as a witness, I could and would testify as set forth below.

2. I have worked for Planned Parenthood since 1990. I first worked at a local affiliate in Rochester, New York, where I was responsible for security at that location. In 1997, I began to work for PPFA on the affiliate security team. I have held the position of National Director for Affiliate Security since 2008.

3. Through my work and from a review of relevant literature, I know that there has been a long history of violence against abortion providers and abortion-providing facilities.

DECLARATION OF ELLEN GERTZOG - 1

1 According to the National Abortion Federation (“NAF”), “[s]ince 1977 there have been 11
2 murders, 26 attempted murders, 42 bombings, 185 arsons, and thousands of incidents of criminal
3 activities directed at abortion providers.” National Abortion Federation, 2015 Violence and
4 Disruption Statistics, at 1 (Apr. 2016), available at [http://prochoice.org/wp-](http://prochoice.org/wp-content/uploads/2015-NAF-Violence-Disruption-Stats.pdf)
5 [content/uploads/2015-NAF-Violence-Disruption-Stats.pdf](http://prochoice.org/wp-content/uploads/2015-NAF-Violence-Disruption-Stats.pdf) (hereafter, NAF Report).

6 4. In my time at PPFA, I have seen a steady escalation of tactics designed to
7 intimidate individuals associated with Planned Parenthood. In general, there is a growing
8 understanding among law enforcement and other security analysts that the kind of language and
9 rhetoric used to discuss controversial subjects such as abortion can incite violence. Individuals
10 who are inspired by anti-abortion rhetoric can even commit deadly acts of violence. For
11 example, in November 2015, a man who shot and killed three people and injured nine at a
12 Planned Parenthood health center in Colorado Springs, Colorado specifically indicated that he
13 was inspired by rhetoric surrounding fetal tissue donation and other anti-abortion rhetoric. *See*
14 Fred Barbash and Yanan Wang, “The twisted ‘dream’ of accused Planned Parenthood killer
15 Robert Dear Jr.,” Washington Post (April 12, 2016), attached as **Exhibit A**.

16 5. Planned Parenthood employees have been harassed in their homes, in their
17 workplaces, over the phone, and through any online presence they may have, such as on social
18 media, all due to the nature of their employment and their association with abortion. This creates
19 a dynamic in which no part of these Planned Parenthood employees’ lives are their own to live
20 free from harassment. Even if these employees have not experienced direct violence, this
21 environment of constant harassment because of their jobs creates fear and intimidation, along
22 with the knowledge that they could experience violence at any time.

23 6. Planned Parenthood employees also experience invasion of their privacy and
24 threats to their sense of safety by having personal information posted online. There are many
25 websites where anti-abortion activists not only post photographs of staff members, but also of
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DECLARATION OF ELLEN GERTZOG - 2

1 their cars and homes, sometimes with addresses, license plate numbers, and private phone
2 numbers, leaving these employees vulnerable to harassment in their homes and neighborhoods.
3 These websites implicitly encourage activism against these providers and cause employees to be
4 afraid for their own safety and that of their families.

5 7. Planned Parenthood employees have reported being harassed in their homes and
6 neighborhoods. Employees have reported that anti-abortion activists often sent graphic postcards
7 to employees' home addresses, distributed leaflets in employees' neighborhoods to "warn"
8 neighbors that someone associated with abortion lived nearby, and picketed employees' homes.
9 These activities have been perpetrated most often against Planned Parenthood physicians, but
10 staff in other roles and even vendors who provide Planned Parenthood with supplies have also
11 been targeted.

12 8. Since July 2015, when an anti-abortion group called the Center for Medical
13 Progress ("CMP") released covertly recorded videos showing Planned Parenthood employees
14 discussing fetal tissue donation, there has been a sharp increase in threats, harassment,
15 vandalism, and violence against Planned Parenthood affiliates, staff members, and patients. As a
16 recent NAF report explains, the "2015 statistics reflect a dramatic increase in hate speech and
17 internet harassment, death threats, attempted murder, and murder, which coincided with the
18 release of heavily-edited, misleading, and inflammatory videos beginning in July." NAF Report
19 at 1.

20 9. In addition to the Colorado Springs shooting, in July and August of 2015,
21 immediately following the release of the CMP videos, Planned Parenthood affiliates reported
22 849 incidents of violence, harassment, and vandalism at health centers around the country. This
23 number is more than triple the average number of incidents that Planned Parenthood affiliates
24 reported in July and August of 2014. These incidents included threats and suspicious calls,
25 trespassing, disruptive persons, persons attempting to bring weapons into the clinic, and
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DECLARATION OF ELLEN GERTZOG - 3

1 vandalism. Harassment was the most common security incident. Increased numbers of security
2 incidents have continued since that time to the present day.

3 10. In the immediate aftermath of the CMP video release, Planned Parenthood
4 employees were subjected to increased threats and harassment. In one case, a man offered a
5 bounty of \$10,000 to murder one Planned Parenthood physician, who was filmed without her
6 knowledge or consent and featured in the CMP videos. While that particular perpetrator has
7 been identified by law enforcement, other employees have also received abhorrent, graphic
8 communications that rise to the level of actionable threats.

9 11. One medical director of a Planned Parenthood clinic has relocated her family
10 twice in the last year in order to protect herself and her preschool-aged children. She left her
11 first home because picketers came to her home and behaved aggressively toward her and her
12 family. After she moved, picketers came to her new home, forcing her once again to move in
13 order to be able to live and raise her family free of harassment.

14 12. Acts of arson and vandalism are also a serious concern for Planned Parenthood
15 affiliated clinics. In September of 2015, the level of animus not only against abortion providers,
16 but against Planned Parenthood in general was revealed when an arsonist set fire to a Planned
17 Parenthood health center in Pullman, Washington, forcing it to close for six months. This arson
18 was committed in a similar manner to other arsons of Planned Parenthood health centers across
19 the country at the time: arsonists smashed windows and threw fire accelerants and flaming
20 materials through the broken windows.

21 13. Other forms of vandalism and harassment have increased as well since the release
22 of the CMP videos. In Washington State, the number of reported incidents of vandalism of
23 Planned Parenthood health centers doubled, from nine in 2014 to 18 in 2015. During that time
24 period, Washington health centers also saw an increase in reported incidents of physical
25 obstruction, from zero to seven, and in harassment, from 33 incidents to 44.

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DECLARATION OF ELLEN GERTZOG - 4

1 14. Planned Parenthood employees experience harassment due to their employment,
2 both at their workplaces and in their homes and neighborhoods. As the National Director for
3 Affiliate Security, I routinely assess the risk to personal safety for Planned Parenthood
4 employees. Based on my expertise with security risks, I believe that if personally identifying
5 information for people associated with fetal tissue donation and research and the Birth Defects
6 Research Lab at the University of Washington is publicly released, those persons will be at
7 particular risk due to the nature of their work and the publicity surrounding the fetal tissue
8 donation.
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DECLARATION OF ELLEN GERTZOG - 5

1 I declare under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct.
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4 SIGNED this 2nd day of August 2016, at _____, New York.
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6 _____
7 ELLEN GERTZOG
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DECLARATION OF ELLEN GERTZOG - 6

West's Annotated Code of Maryland
General Provisions (Refs & Annos)
Title 4. Public Information Act (Refs & Annos)
Subtitle 3. Denials of Inspection (Refs & Annos)
Part III. Required Denials for Specific Information (Refs & Annos)

MD Code, General Provisions, § 4-333
Formerly cited as MD CODE, SG, § 10-617

§ 4-333. Licensing records

Effective: October 1, 2014
Currentness

In general

(a) Subject to subsections (b) through (d) of this section, a custodian shall deny inspection of the part of a public record that contains information about the licensing of an individual in an occupation or a profession.

Required inspection

(b) A custodian shall allow inspection of the part of a public record that gives:

- (1) the name of the licensee;
- (2) the business address of the licensee or, if the business address is not available, the home address of the licensee after the custodian redacts any information that identifies the location as the home address of an individual with a disability as defined in § 20-701 of the State Government Article;
- (3) the business telephone number of the licensee;
- (4) the educational and occupational background of the licensee;
- (5) the professional qualifications of the licensee;
- (6) any orders and findings that result from formal disciplinary actions; and
- (7) any evidence that has been provided to the custodian to meet the requirements of a statute as to financial responsibility.

Permissible inspection

(c) A custodian may allow inspection of other information about a licensee if:

- (1) the custodian finds a compelling public purpose; and
- (2) the rules or regulations of the official custodian allow the inspection.

Required inspection by person in interest

(d) Except as otherwise provided by this section or other law, a custodian shall allow inspection by the person in interest.

Required omission from list on request

(e) A custodian who sells lists of licensees shall omit from the lists the name of any licensee, on written request of the licensee.

Credits

Added by Acts 2014, c. 94, § 2, eff. Oct. 1, 2014.

Editors' Notes

LEGISLATIVE NOTES

Revisor's Note (Acts 2014, c. 94):

This section is new language derived without substantive change from former SG § 10-617(h) and (b)(1).

In subsection (b)(2) of this section, the reference to redacting "any information" is substituted for the former reference to redacting "all information, if any" for brevity.

Defined terms: "Custodian" § 4-101

"Person in interest" § 4-101

"Public record" § 4-101

MD Code, General Provisions, § 4-333, MD GEN PROVIS § 4-333

Current through all legislation from the 2016 Regular Session of the General Assembly in effect through July 1, 2016

Maine Revised Statutes

Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES

Chapter 5: SECRETARY OF STATE

§90-B. ADDRESS CONFIDENTIALITY PROGRAM

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Address" means a residential street, school or work address of an individual, including any geographically specific description or coordinate that identifies a residential address, as specified on the individual's application to be a program participant under this section. [2011, c. 195, §1 (AMD) .]

B. "Application assistant" means an employee of a state or local agency, or of a nonprofit program that provides counseling, referral, shelter or other specialized service to victims of domestic abuse, rape, sexual assault or stalking and who has been designated by the respective agency, and trained, accepted and registered by the secretary to assist individuals in the completion of program participation applications. [2001, c. 539, §1 (NEW) .]

C. "Designated address" means the address assigned to a program participant by the secretary pursuant to this section. [2001, c. 539, §1 (NEW) .]

D. "Mailing address" means an address that is recognized for delivery by the United States Postal Service. [2001, c. 539, §1 (NEW) .]

E. "Program" means the Address Confidentiality Program established in this section. [2001, c. 539, §1 (NEW) .]

F. "Program participant" means a person certified by the Secretary of State to participate in the program. [2001, c. 539, §1 (NEW) .]

G. "Secretary" means the Secretary of State. [2001, c. 539, §1 (NEW) .]

[2011, c. 195, §1 (AMD) .]

2. Program established. The Address Confidentiality Program is established to protect victims of domestic violence, stalking or sexual assault by authorizing the use of designated addresses for such victims. The program is administered by the secretary under the following application and certification procedures.

A. Upon recommendation of an application assistant, an adult person, a parent or guardian acting on behalf of a minor or a guardian acting on behalf of an incapacitated person may apply to the secretary to have a designated address assigned by the secretary to serve as the person's address or the address of the minor or incapacitated person. [2001, c. 539, §1 (NEW) .]

B. The secretary may approve an application only if it is filed with the office of the secretary in the manner established by rule and on a form prescribed by the secretary. A completed application must contain:

(1) The application preparation date, the applicant's signature and the signature and registration number of the application assistant who assisted the applicant in applying to be a program participant;

(2) A designation of the secretary as agent for purposes of service of process and for receipt of first-class mail;

(3) The mailing address where the applicant may be contacted by the secretary or a designee and the telephone number or numbers where the applicant may be called by the secretary or the secretary's designee; and

(4) One or more addresses that the applicant requests not be disclosed for the reason that disclosure will jeopardize the applicant's safety or increase the risk of violence to the applicant or members of the applicant's household. [2001, c. 539, §1 (NEW) .]

C. Upon receipt of a properly completed application, the secretary may certify the applicant as a program participant. A program participant is certified for 4 years following the date of initial certification unless the certification is withdrawn or invalidated before that date. The secretary shall send notification of lapsing certification and a reapplication form to a program participant at least 4 weeks prior to the expiration of the program participant's certification. [2001, c. 539, §1 (NEW) .]

D. The secretary shall forward first-class mail to the appropriate program participants. [2001, c. 539, §1 (NEW) .]

E. A person who violates this paragraph commits a Class E crime.

(1) An applicant may not file an application knowing that it:

(a) Contains false or incorrect information; or

(b) Falsely claims that disclosure of the applicant's address or mailing address threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made.

(2) An application assistant may not assist or participate in the filing of an application that the application assistant knows:

(a) Contains false or incorrect information; or

(b) Falsely claims that disclosure of the applicant's address or mailing address threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made. [2001, c. 2, Pt. A, §4 (COR) .]

[2001, c. 2, Pt. A, §4 (COR) .]

3. Cancellation. Certification for the program may be canceled if one or more of the following conditions apply:

A. If the program participant obtains a name change, unless the program participant provides the secretary with documentation of a legal name change within 10 business days of the name change; [2001, c. 539, §1 (NEW) .]

B. If there is a change in the residential street address from the one listed on the application, unless the program participant provides the secretary with notice of the change in such manner as the secretary provides by rule; or [2001, c. 539, §1 (NEW) .]

C. The applicant or program participant violates subsection 2, paragraph E, subparagraph (1). [2001, c. 539, §1 (NEW) .]

[2001, c. 539, §1 (NEW) .]

4. Use of designated address. Upon demonstration of a program participant's certification in the program, state and local government agencies and the courts shall accept and use only the designated address as a program participant's address unless the secretary has approved an exemption pursuant to subsection 5-A.

A. [2015, c. 313, §1 (RP) .]

B. [2015, c. 313, §1 (RP) .]

[2015, c. 313, §1 (AMD) .]

5. Disclosure to law enforcement and state agencies.

[2015, c. 313, §2 (RP) .]

5-A. Disclosure to law enforcement and to other state and local agencies. If the secretary determines it appropriate, the secretary may make a program participant's address or mailing address available for use by granting an exemption under the following circumstances:

A. Upon request to the secretary by:

- (1) A law enforcement agency in the manner provided for by rule; or
- (2) A commissioner or other chief administrator of a state or local government agency or the commissioner's or administrator's designee in the manner provided for by rule; and [2015, c. 313, §3 (NEW) .]

B. Upon a finding by the secretary that:

- (1) An agency under paragraph A has a bona fide statutory, administrative or law enforcement requirement for use of the program participant's address or mailing address such that the agency is unable to fulfill its statutory duties and obligations without the address or mailing address; and
- (2) The program participant's address or mailing address will be used only for those statutory, administrative or law enforcement purposes and otherwise will be kept under seal and excluded from public inspection. [2015, c. 313, §3 (NEW) .]

[2015, c. 313, §3 (NEW) .]

6. Disclosure pursuant to court order or canceled certification. If the secretary determines appropriate, the secretary shall allow a program participant's address and mailing address to be made available for use under the following circumstances:

A. To a person identified in a court order, upon the secretary's receipt of that court order that specifically orders the disclosure of a particular program participant's address and mailing address and the reasons stated for the disclosure; or [2001, c. 539, §1 (NEW) .]

B. If the certification has been canceled because the applicant or program participant violated subsection 2, paragraph E, subparagraph (1). [2001, c. 539, §1 (NEW) .]

[2013, c. 478, §1 (AMD) .]

7. Confidentiality. The program participant's application, supporting materials and the program's state e-mail account are not a public record and must be kept confidential by the secretary.

[2011, c. 195, §2 (AMD) .]

8. Rules. The secretary shall adopt rules to carry out this section. These rules are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[2001, c. 539, §1 (NEW) .]

SECTION HISTORY

RR 2001, c. 2, §A4 (COR). 2001, c. 539, §1 (NEW). 2011, c. 195, §§1, 2 (AMD). 2013, c. 478, §1 (AMD). 2015, c. 313, §§1-3 (AMD).

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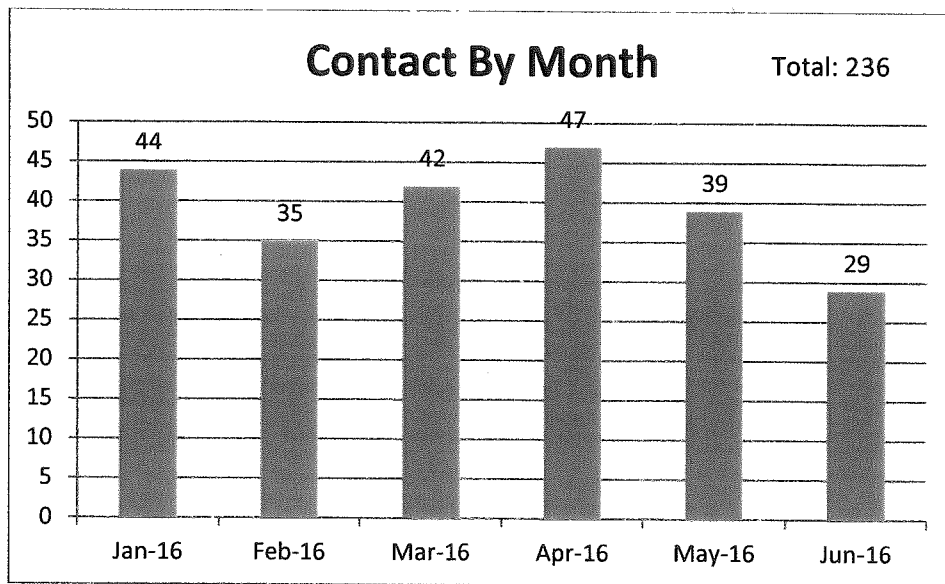
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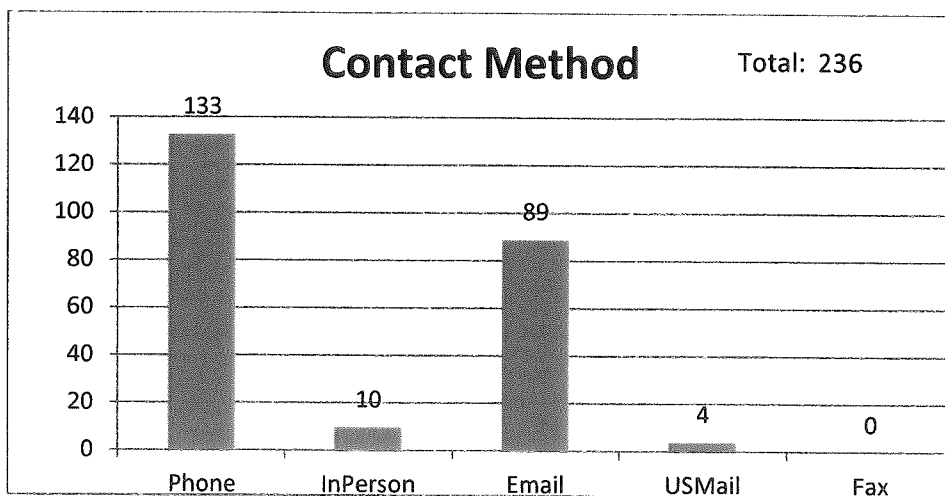
Public Access Ombudsman Mid-year Data Summary 2016

One of the functions of the ombudsman is to track data about Freedom of Access complaints and inquiries. This mid-year update provides a brief outline of the data for the first half of calendar year 2016.

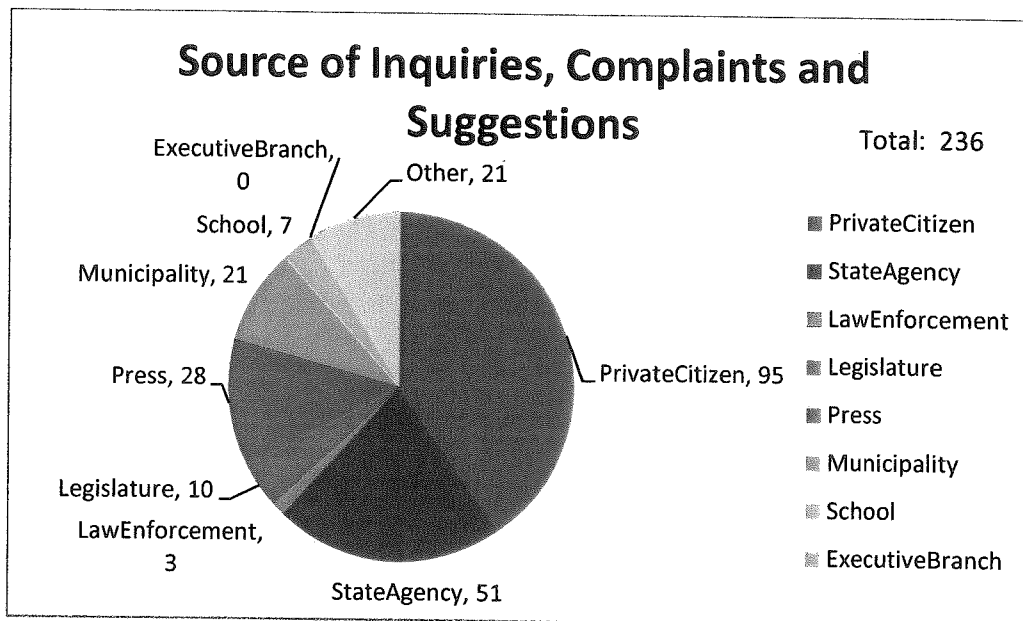
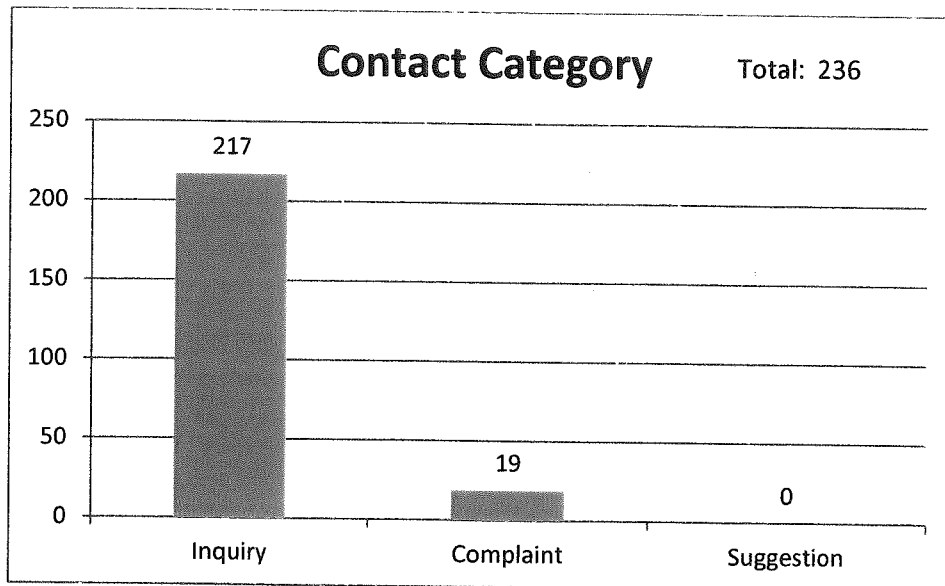
The total number of contacts through June 30th was 236. For comparison, the total yearly contacts were 303 for 2013, 370 for 2014 and 416 for 2015. The monthly totals for January through June are listed below. Although these numbers fluctuate throughout the months, based on the mid-year amount it is possible that the total yearly contacts for 2016 will exceed 2015 and continue the upward trend.

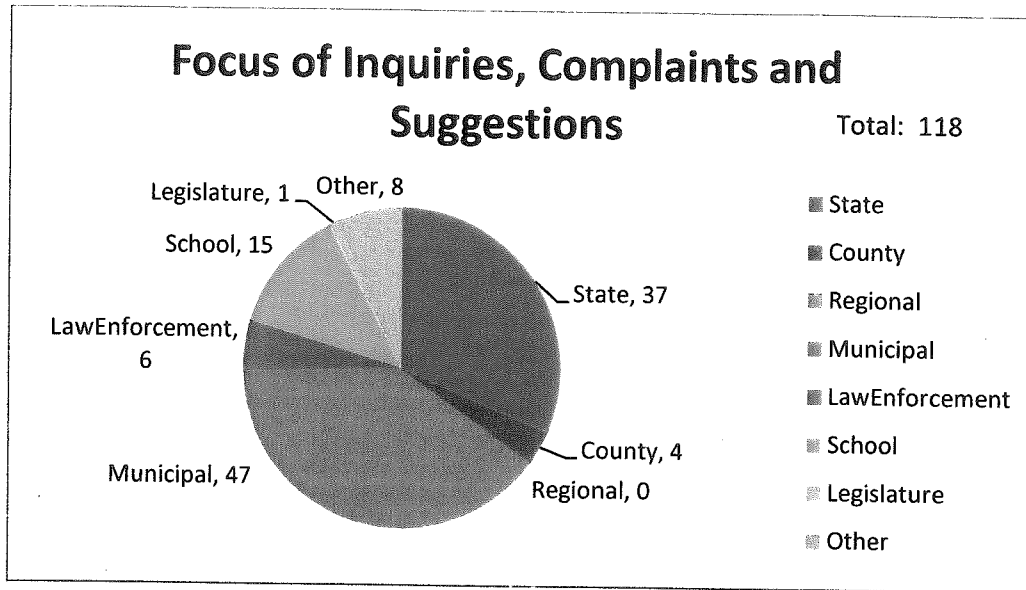


The telephone continues to be the primary method of contact with the ombudsman.



Inquiries continued to form most of the contacts. Contacts that were characterized as complaints involved a substantial controversy between the parties with specific relief or remedy sought by the complainant.





Consistent with the data from 2013, 2014 and 2015, the bulk of contacts were telephone inquiries from private citizens about public records held by municipal government agencies. The number of contacts from state agencies continues to climb and based on the mid-year data, 2016 could possibly eclipse the 2015 total of 96.

The most common questions about public records involved the basis for a denial and undue delay.

The most common questions about public meetings involved the use of executive session and what constitutes a meeting.

Agency FOAA Data Reporting for 2016

Pursuant to 5 M.R.S. § 200-I(2)(F) my annual FOAA Ombudsman report for 2016 will include data on the number of FOAA requests, average response time and the costs of processing FOAA requests for each of the executive branch State agencies.

<http://www.mainelegislature.org/legis/statutes/5/title5sec200-I.html>

F. Coordinate with the state agency public access officers the compilation of data through the development of a uniform log to facilitate record keeping and annual reporting of the number of requests for information, the average response time and the costs of processing requests. [2013, c. 229, §2 (NEW).]

I would like to include the data for 2016 in my report to the Joint Standing Committee on Judiciary in January 2017.

Although the statute refers to “requests for information” and that could include a set of data much broader than FOAA requests, it seems clear from the context of this provision that the reporting should be limited to actual FOAA requests.

Also, “average” response time may be difficult to calculate. I suggest that response times be reported based on the set timeframes listed below.

The “costs” of processing requests could also include multiple criteria to assess the use of agency resources. As a baseline the data should include the amount billed as fees for FOAA requests. If you are able to calculate the actual hours spent responding to FOAA requests I will compile that data as well.

Please provide an excel spreadsheet with the following fields:

1. Number of FOAA requests received in 2015
2. Response time 0 – 5 days
3. Response time 6 – 30 days
4. Response time 31 – 60 days
5. Response time greater than 60 days
6. Amount of fees and costs for FOAA requests
7. Amount of agency hours spent responding to FOAA requests

Findings from 2015

A total of 969 FOAA requests were logged by the fourteen executive branch state agencies in 2015. There was a wide variation in totals between the agencies from six requests for Defense, Veterans & Emergency Management to 330 for the Department of Health and Human Services. Although 557 requests were responded to within five days, 37 took 60 days or more to fulfill. There can be a number of reasons for the length of response times including the scope and complexity of the request, earlier pending requests and the availability of employees to shift from operational duties to FOAA. This relatively small data set does not provide sufficient information to determine why some requests took longer than others.

Agencies reported a total of \$11,273 of fees charged for responding to FOAA requests. This indicator does not include hourly fees and costs that could have been charged and were waived. Several agencies did not report on this metric and the actual total would certainly be greater with complete data.

Agency staff hours spent responding to FOAA requests totaled 1,269 hours with several agencies not reporting this indicator. The Department of Health and Human Services had both the greatest number of requests (330) and number of hours spent on FOAA responses (404.45) while the Department of Defense, Veterans & Emergency Management had the least number of requests (6) and number of hours spent on FOAA responses (2) among all the agencies.

STATE AGENCY 2015 FOAA REPORTING

AGENCY	FOAA REQUESTS RECEIVED	RESPONSE TIME 0-5 DAYS	RESPONSE TIME 6-30 DAYS	RESPONSE TIME 31-60 DAYS	RESPONSE TIME >60 DAYS	FEES CHARGED	AGENCY HOURS TO RESPOND	PENDING 2015 REQUESTS
Administrative & Financial Services	98	36	35	9	4	0	110	14
Agriculture, Conservation & Forestry	48	10	24	6	3	\$1,645	135	5
Corrections	23	17	6	0	0	1	n/a	0
Defense, Veterans & Emergency Management	6	1	1	2	1	0	2	1
Economic & Community Development	6	1	2	0	3	\$ 345	19	0
Education	49	16	18	9	4	\$ 338	168.75	2
Environmental Protection	59	17	26	6	2	\$3,439	181	8
Health & Human Services	330	271	34	12	13	\$2,167	404.45	0
Inland Fisheries & Wildlife	35	6	9	6	3	\$2,153	160	12
Labor	8	6	1	0	2	\$ 185	12	0
Marine Resources	10	0	8	1	1	\$ 15	24	0
Professional & Financial Regulation	35	19	13	2	1	\$ 298	53	0
Public Safety	217	135	41	n/a	n/a	n/a	n/a	0
Transportation	45	22	22	1	0	687	n/a	0
TOTALS	969	557	240	54	37	\$11,273	1,269.25	42

Agency comments:

Labor: True staff costs exceed hourly FOAA reimbursement rate. Most staff involved were high-level management, plus usually AAG time for reviewing.

Marine Resources: The actual amount of time spent on providing individuals with information is much greater than hours spent responding to listed FOAA requests. Marine Resources processes hundreds of data requests that are not considered FOAA requests.

RESPONDING TO A FREEDOM OF ACCESS ACT (FOAA) REQUEST

Receipt

1. Is it a FOAA request, a request for information, or a request to answer questions?
 - *Agency dissemination of information as usual course of business, not all is FOAA*
 - *Distinguish request for records from questions*
 - *For hybrid requests that include questions and possibly a records request, clarify with requester, if possible, and summarize the history of these communications in the response.*
2. What is the date of receipt?

Date of receipt is date a “sufficient description” of the record is received by the agency or official at the office responsible for maintaining the record. (*Effective October 15, 2015*)

 - *Five day deadline; never let it sit on your desk*

FOAA database entry

How is the agency tracking and retaining FOAA requests?

Communication

1. Do agency management, the public access officer, or the press contact need to be consulted?
2. Who has custody of responsive records?

Acknowledgment

1. Acknowledge receipt of request within 5 working days of receipt of the request. [§ 408-A(3)]¹
2. Forward a request made to a department or office within an agency to the office or official who maintains the record “without willful delay.” (*Effective October 15, 2015*)
3. Notify the requester that the request was forwarded within the agency (*Effective October 15, 2015*)
4. A forwarded request must be acknowledged by the office to which it was forwarded within 5 working days of receipt of the request.

Clarify

1. Restate the language of the request in the acknowledgment to confirm scope and content.
2. Communicate with requester to narrow a broad request.

Estimate

1. Provide an estimate of time within which the agency will comply with request within a reasonable amount of time of receiving the request. [§ 408-A(3)]
FOAA requires a reasonable time frame for providing records. [§ 408-A]
Provide estimate of fees within a reasonable amount of time of receiving the request. [§ 408-A(3)]

¹ All citations are to M.R.S. Title 1.

Current with legislation through the 2016 Second Regular Session of the 127th Legislature.

- Seek confirmation from requester before proceeding with response for estimate greater than \$30.
2. Review any fee waiver request.

Notice of denial

1. Provide written notice to requester within 5 working days of receipt of the request if denying access to any public records. State the legal basis for the denial. [§ 408-A(4)]
2. If the identification of confidential records requires more time, provide an initial written notice within 5 working days of receipt of the request explaining that access to some public records may be denied after the review is complete. This notice may be combined with acknowledgement of receipt.
3. A supplemental denial or further explanation of the grounds for the denial may be provided depending on the circumstances.

Search

- *Due diligence: Can you demonstrate that you conducted a search reasonably calculated to uncover all relevant documents?*
1. Key custodians: Public access officer and/or assigned staff identify who may have responsive records.
 2. Repositories: Identify repositories associated with these custodians.
 - Email regardless of source or location
 - Personal network (home directories)
 - Local repositories (“My Documents” and other local collections)
 - Shared (non-custodian-based) repositories
 - Hardcopy documents
 3. Scope of the search: Develop a set of relevant filter criteria such as a keyword list, date range and file types.
 - In some circumstances, it may be necessary to agree with requester on the culling criteria.

Confidentiality review

Determine if any public records requested are confidential, privileged or otherwise protected from disclosure. [§ 402(3), 408-A]

1. Redact confidential or privileged material where reasonably possible rather than withholding entire public record.
2. If access is denied in whole or in part, provide written notice of denial and state reason for denial. [§ 408-A(4)]
3. Depending on the circumstances, including the types and numbers of records requested, written notice may take the form of a letter summarizing the reasons for denial of access or of a more formal privilege log.

Provide access

Schedule time to inspect records; provide paper copies; or provide access to an electronically stored record as either a printed document or in the medium it is stored at the discretion of the requester. [§ 408-A(5) &(7)]

Time and expense

1. Track staff time, actual costs and copying fees.
2. The invoice will account for the recorded costs and any fee waiver that has been granted.
3. Fees:
 - Reasonable copying fee [§ 408-A(8)(A)]
 - Actual cost of searching, retrieving & compiling (compiling includes reviewing & redacting confidential information) of \$15/hour after the first hour of staff time. [§ 408-A(8)(B)]
 - Determine actual cost to convert into form susceptible of visual or aural comprehension or into usable format. [§ 408-A(7)(A) & (8)(C)]
 - Actual mailing costs. [§ 408-A(8)(E)]
4. No charge for inspection unless public record cannot be inspected without being compiled or converted. [§ 408-A(1) & (8)(D)]
5. Fee notification if cost is greater than \$30.
 - If estimated total cost is greater than \$30, you must inform requester (preferably in writing) before proceeding. [§ 408-A(9)]
6. Fee notification if cost is greater than \$100.
 - If estimated total cost is greater than \$100, requester may be required to pay all or portion of estimated costs before search, retrieval, compiling, conversion & copying.
 - Payment in advance of search, retrieval, compiling, conversion & copying may be required if requester has previously failed to pay properly assessed fee in timely manner. [§ 408-A(9) & (10)]
7. Part or all of the fee may be waived if:
 - Requester is indigent, or
 - The agency determines release of public record requested to be in public interest because doing so is likely to contribute significantly to public understanding of operations or activities of government and is not primarily in commercial interest of requester.

Close the FOAA request

HOW TO CONDUCT A FOAA SEARCH FOR EMAIL

The Freedom of Access Act (FOAA) defines searching, retrieving, compiling, reviewing, redacting and converting as actions an agency or official may charge a requester in responding to a FOAA request. Of all of these activities, the search for records can be the most challenging. Especially with broad or vague FOAA requests for email, figuring out how to proceed with a search that will be complete but not pose an undue burden on the normal operations of staff or officials can be troublesome. A systematic approach that is reasonably calculated to uncover all relevant emails will save time and avoid haphazard results.

The FOAA search is one step in a five-part process that begins with the proper preservation of public records and ends with the timely delivery of a responsive but not confidential subset of documents. To be useful in practice, any protocol for responding to a request for emails should include instructions for the retention, search, assembly, review and production of the records.

Retain: Preserve the entire pool of emails subject to public records law

Email communications in the possession or custody of staff or appointed officials that concern the transaction of government business are public records and must be retained according to state retention schedules. Preservation of public records in a recordkeeping system sanctioned and maintained by the agency ensures control of the public email of both current and former employees and officials. Access to email is obviously hindered by the use of personal email accounts for public business.

Search: Collect raw subset of relevant emails

Clarifying the request with the requester to narrow the time frame, content area and possible staff or officials who may have communications will help make relevant emails easier to find.

Custodians are individuals who are likely to be in possession or custody of emails responsive to the FOAA request. Identification of custodians is crucial to targeting the location of potentially responsive records within the larger pool of emails that have been retained.

After the custodians have been named, their **repositories** containing potentially responsive records are identified. This includes all sources and formats of email and any attachments that may be stored on the local network mail server, in a remote mail server, in a web-based account such as Yahoo or Gmail, or in locally-saved Personal Storage (PST) or individual files.

Once the repositories have been identified, **filter criteria** such as the date range of the request and relevant keywords can be used to winnow out a subset of records that are responsive. The subset of records produced from this initial electronic search will include "hits" that are responsive but also some emails that are outside the request parameters. These raw search results are collected in a working file for the next step in the process.

Assemble: Process the selected emails to create a subset for review

A secondary search is conducted by the custodian to remove nonresponsive emails and duplicates. The review set of responsive emails can then be exported from the custodian to the person designated as the reviewer.

Review: Identify and redact confidential or privileged information

The review set of documents is checked for confidentiality and redactions or denials are marked as appropriate. The subset of responsive, non-confidential emails is prepared for production.

Access: Production of responsive, non-confidential subset of records

The production set of public records is exported or sent to the requester. If the scope of the first production set is too narrow, the criteria for an expanded search can be determined for a subsequent response.

An agency should retain separate files with the production set of public records as well as the confidential records with and without redactions.

How to Conduct a FOAA Search for Email Hands-on Workshop

This hands-on workshop is intended for agency public access officers (FOAA coordinators), as well as anyone else who coordinates or processes FOAA requests for email. It will be scheduled in an agency conference room that has wireless connection. If those outside the Augusta area would like to participate, we can set up a separate remote session via webinar. If you have a laptop computer, bring it. If you don't have a laptop, you'll be paired up with another attendee.

The session is scheduled for 90 minutes – 15 minute introduction, 30 minute demonstration, 30 minute practice, and 15 minute Q&A. Follow-on help is available at your agency on request.

Introduction – Brenda Kielty, Public Access Ombudsman (15 minutes)

- FOAA overview as related to email
- FOAA search 5-part process
 1. **Retain:** Preserve the entire pool of emails subject to public records law
 2. **Search:** Collect raw subset of relevant emails
 - Clarifying the request (timeframe, content area, possible staff/ officials)
 - Custodians who would have emails responsive to the FOAA request
 - Repositories (sources) of potentially responsive records (active mailbox, email archive files, attachments)
 - Filter (search) criteria to find a subset of responsive records
 3. **Assemble:** Process the selected emails to create a subset for review
 4. **Review:** Identify and redact confidential or privileged information
 5. **Access:** Production of responsive, non-confidential subset of records

Demonstration – Eric Stout, OIT Records Officer and e-discovery support (30 minutes)

1. **Retain:** How to find and “attach” email archive PST files – to ensure the search covers the requested timeframe (for prior years, you usually have to search email archive files).
2. **Search:** Current folder (inbox), all other mailbox folders, archive PST files (multiple years) using 2 search terms. Results of both search terms are put into a working folder.
3. **Assemble:** Gather emails from multiple people into a single folder, then “de-duplicate” (squeeze out true duplicates sent to multiple people or the result of multiple search terms).
4. **Review:** Redaction options, including using Adobe Acrobat Pro for electronic redaction.
5. **Access:** Options for producing relevant emails (printed paper, scanning to a PDF file, sending native Outlook messages, or using Adobe Acrobat Pro for totally electronic and redacted files).

Practice – all attendees (30 minutes)

- Each attendee (on their own laptop or sharing with another) will practice what was demonstrated (the 5 steps above).

Q&A (15 minutes)

- Questions about the 5-part process
- Questions about the mechanics of search and assembly of emails

Follow-on help is available at your agency on request.

RIGHT TO KNOW ADVISORY COMMITTEE

AGENDA

September 14, 2016

1:00 p.m.

Room 228, State House, Augusta

Convene

1. Welcome and Introductions
2. Public Hearing – Maine’s Freedom of Access Act
3. Review of draft letter to Judiciary Committee regarding public access to personal contact information for professions and occupations licensed by the State
4. Review subcommittee recommendations relating to existing public records exceptions
5. Annual Report – preliminary draft
6. Other issues or questions
7. Future meetings

Adjourn

NOTICE OF PUBLIC HEARING

The Right to Know Advisory Committee will hold a public hearing at the following time and place:

September 14, 2016, 1:00 pm
Room 228, State House
Augusta, ME 04333

The purpose of the hearing is to take comments and suggestions about how the Freedom of Access Act is working and how it might be improved, consistent with its goals of giving citizens adequate access to records and meetings of decision making bodies of government.

Maine's Right to Know Advisory Committee serves as a resource for ensuring compliance with the law and responsibility for a broad range of activities to advance the purposes and principles underlying Maine's Freedom of Access Act. The Freedom of Access Act, which can be found at Title 1, chapter 13 of the Maine Revised Statutes, states the Legislature's intent that public proceedings exist to aid in the conduct of the people's business, that government actions be taken openly, and that the records of government actions be open to public inspection and deliberations be conducted openly. The law provides the public with the right to inspect and copy public records and imposes requirements on government bodies who have received such a request, as well as requiring that bodies of government conduct their meetings in public. The law also provides specific exceptions that allow State and local government bodies to keep certain records or information confidential, or to have executive sessions that are not open to the public during meetings that are otherwise public.

The Advisory Committee requests testimony on the following topic:

Considering the sensitive nature of certain information held by government entities, how could public access to government meetings and records be improved?

Written comments may be submitted to:

Donna Hurley
Office of Policy and Legal Analysis
Cross Office Building, Room 215
13 State House Station
Augusta, ME 04333
Donna.hurley@legislature.maine.gov

If you plan to testify at the public hearing or to submit comments, the Right to Know Advisory Committee requests that your testimony or comments relate to the following general questions:

- How did you learn about the rights provided in the Freedom of Access Act?
- Did you have questions about how to make a request for a public record, and if so, how did you get answers to them?
- What were you surprised to learn when you made a request for a public record?
- If an issue arose that affected your ability to obtain a public record, how did you attempt to resolve that issue?
- If you are a member of a government body, how does your understanding of the requirements of the Freedom of Access Act differ from the expectations of those making public records requests?
- If you are a member of a government body, do the requirements of the Freedom of Access Act allow you to accomplish your government duties and comply with existing public access requirements and procedures?

This hearing is not a forum for the resolution of specific complaints about meetings or records. The Right to Know Advisory Committee asks that your testimony and comments do not question the motives of others or seek resolution of a particular dispute. Depending upon attendance, the Advisory Committee may limit testimony to a certain duration.

Fouts, Henry

From: Garrett Corbin <GCorbin@memun.org>
Sent: Thursday, September 01, 2016 11:25 AM
To: McCarthyReid, Colleen; Fouts, Henry
Subject: RTKAC Public Hearing

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Good morning Colleen and Henry,

Writing to let you know that I followed up on the request made by Mary Ann Lynch at the last RTKAC meeting and communicated the hearing notice to our members via our monthly e-newsletter, *MMA This Month*, which went out yesterday. The description from the newsletter is below. Also below is a comment I received from Wells – Lt. Congdon confirmed with me that he would like his email to be submitted as a written comment to the Committee.

Best,
Garrett

Garrett Corbin
Legislative Advocate
Maine Municipal Association
(207) 624-0108
gcorbin@memun.org

Newsletter notice:

Commenting on State's Freedom of Access Act

Maine's Right to Know Advisory Committee will hold a hearing to receive general comments from the public, including municipal officials, on how the Freedom of Access Act is working and how it might be improved. **The hearing is scheduled for Wednesday, Sept. 14 at 1 p.m. in room 228 of the State House in Augusta.** The Committee also accepts written comments. Feel free to contact Garrett Corbin in MMA's State and Federal Relations Dept. at 1-800-452-8786 or gcorbin@memun.org if you have questions or suggestions.

The Committee's formal notice advertising this public hearing is [found here](#).

From: Gerald Congdon [<mailto:gcongdon@wellstown.org>]
Sent: Wednesday, August 31, 2016 4:49 PM
To: Garrett Corbin <GCorbin@memun.org>
Subject: Freedom of Access Act

It has been my experience that if you ask 3 attorneys or 3 so-called knowledgeable people what can be released in a FOAA request, you will receive that many different answers. I can only speak from a law enforcement officer's perspective so I don't know how it is working in other government sectors. Many people will call and request any/all

reports involving so and so, usually neighbor disputes, people going through divorces and other reasons. Some agencies provide an entire report and others (like us) try to comply as best we can while still following Maine Statutes. My recommendation would be to provide a visual "flow-chart" to guide those of us responsible for responding to these requests to follow. We utilize flow-charts for many purposes and they are easy to follow.

Thanks for listening

Lt. Gerald Congdon

Wells Police Department

PO Box 949

Wells, ME 04090

Office: (207) 361 - 8917

Bus: (207) 646 - 9354

11 September 2016

TO: State of Maine Right to Know Committee

RE: *Considering the sensitive nature of certain information held by government entities, how could public access to government meetings and records be improved?*

FROM:

Robin Hadlock Seeley (Pembroke, ME; 207-956-0815)

1. How did you learn about the rights provided in the Freedom of Access Act?

2. Did you have questions about how to make a request for a public record, and if so, how did you get answers to them?

Yes, I had questions, which were mostly answered by the FAQ on the state website. I read about the rights provided by the Act on the State of Maine website.

3. What were you surprised to learn when you made a request for a public record?

- I was most surprised to learn that there is no time limit in the law – that a record holder may take any amount of time to fulfill a request. I have submitted a request to a state agency, for example, in April 2016, and have still not received the records I have requested.


My request was not actually denied, but was as good as denied, since it has been four and a half months since my request was made. The law should include guidelines for a reasonable response time.

- I was also surprised by this: Town officials (municipal boards whose members are appointed by elected officials, and elected officials) are unfamiliar with the FOA Act, including which records are public records, and whether or not town board meetings have to be advertised by a public notice prior to holding the meeting. That surprises me, since I know that elected officials are required to undergo training in the Act.

4. If an issue arose that affected your ability to obtain a public record, how did you attempt to resolve that issue?

An issue arose. The issue was the agency responding to my request by supplying the records I requested. I have attempted to deal with it by email correspondence with the Records Officer. It remains unresolved.

Sincerely,



Robin Hadlock Seeley
292 Leighton Point Road
Pembroke, ME 04666

Hon. David C. Burns, Chair
Hon. Kimberly Monaghan
Suzanne Goucher
Stephanie Grinnell
A. J. Higgins
Richard LaHaye
Mary Ann Lynch
Judy Meyer

COPY



Kelly Morgan
Christopher Parr
Linda Pistner
Harry Pringle
Helen Rankin
Luke Rossignol
William Shorey
Eric Stout

STATE OF MAINE
RIGHT TO KNOW ADVISORY COMMITTEE

September 14, 2016

Sen. David C. Burns, Senate Chair
Rep. Barry J. Hobbins, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, Maine 04333-0100

Dear Sen. Burns and Rep. Hobbins,

At the Judiciary Committee's request, the Right to Know Advisory Committee reviewed the public records exception in current law that protects as confidential records provided by a railroad company describing hazardous materials transported by the railroad company that are in the possession of a state or local emergency management agency or law enforcement agency, a fire department or other first responder. See 1 MRSA §402, sub-§3, ¶U. We understand that your request was prompted by media articles following enactment of the exception indicating that the public's access to information about the transportation of crude oil through the State may be limited and your interest in ensuring that the public have an additional opportunity to comment and, if necessary, to recommend changes to current law.

The Advisory Committee discussed the public records exception and agreed that the exception may benefit from additional consideration. Although the Advisory Committee offers these comments, we recommend that the Judiciary Committee consider submitting a committee bill to the First Regular Session of the 128th Legislature so that the current exception may be fully vetted by the Legislature in a manner that allows the most meaningful participation by stakeholders, state and local government entities and other members of the public.

The Advisory Committee believes that the current exception is not intended to prevent public access to summary or aggregate information about the transportation of hazardous materials by rail in the State, particularly crude oil, or to prohibit disclosure of information about spills or discharges of hazardous materials. The Advisory Committee expressed the following concerns about the current exception as written.

- Does public disclosure jeopardize the safety of the public and if so, does that safety interest substantially outweigh the public interest in disclosure of the records?

Sept. 14, 2016

- Does public disclosure disadvantage a business or financial interest and, if so, does that interest substantially outweigh the public interest in disclosure of the records?
- Is the language of the current exception too broad? Is the proposed exception as narrowly tailored as possible? The current law references records describing hazardous materials transported by rail as defined in 49 Code of Federal Regulations 172.101 and represents a table of more than 150 pages identifying hazardous materials subject to the exception. Related federal regulations in 49 Code of Federal Regulations, Part 172, also describe the record-keeping and record retention requirements for the transportation and shipping of hazardous materials.
- Does the current language need to be clarified? Does the exception apply to records possessed by the Department of Environmental Protection that relate only to its function as a “first responder”? Are records held by the DEP that are collected from railroad companies for other purposes subject to the exception?
- Is the exception intended to limit the release of information on a retrospective basis? How long should information be kept confidential?

We are hopeful that we’ve provided enough information to assist you in further evaluating this public records exception. Please feel free to contact us or our committee staff if you have any questions or would like additional input.

Thank you for your consideration.

Sincerely,

Sen. David C. Burns, Chair
Right to Know Advisory Committee

cc: Members, Right to Know Advisory Committee
Members, Joint Standing Committee on Judiciary
Margaret Reinsch, Office of Policy and Legal Analysis

FOR RTKAC REVIEW
9/14/16

Hon. David C. Burns, Chair
Hon. Kimberly Monaghan
Suzanne Goucher
Stephanie Grinnell
A. J. Higgins
Richard LaHaye
Mary Ann Lynch
Judy Meyer

Kelly Morgan
Christopher Parr
Linda Pistner
Harry Pringle
Helen Rankin
Luke Rossignol
William Shorey
Eric Stout



STATE OF MAINE
RIGHT TO KNOW ADVISORY COMMITTEE

{date}

Sen. David C. Burns, Senate Chair
Rep. Barry J. Hobbins, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, Maine 04333-0100

Dear Sen. Burns and Rep. Hobbins,

The Right to Know Advisory Committee has had extensive discussions about your request that the Advisory Committee develop comprehensive recommendations for the treatment of personal contact information for professions and occupations regulated by the State. During the Second Regular Session, the Legislature enacted LD 1499, An Act to Increase the Safety of Social Workers”, which created a new confidentiality provision for social worker licensees’ and license applicants’ addresses and telephone numbers. In response to suggestions to include other types of licensed professionals in the scope of the confidentiality exception, we understand you have asked for the Advisory Committee’s assistance in developing a uniform policy for all professions and occupations. Under current law, some licensing boards, e.g., nurses, physicians and osteopaths, make certain licensee information confidential already.

The Advisory Committee agreed that any uniform policy needs to balance the consumer interests of the public in having access to licensee information with the privacy interests of licensees and license applicants. The public has a legitimate need for access to licensing information to ensure that individuals employed in certain professions and occupations are adequately trained and competent, but licensed professionals also have an interest in privacy and personal safety.

The Advisory Committee recommends (*by a vote of 11-2*) an approach that focuses on what categories of personal information about licensees should not be accessible to the public, rather than specifying what licensing information should be public. The Advisory Committee supports the general principle that personal contact information should not be public, similar to the criteria at 1 MRSA §402, sub-§3, ¶O for protecting public employee personal information. Pursuant to 1 MRSA §402, sub-§3, ¶O, the home addresses, home phone and fax numbers, personal cellphone numbers and home email addresses are confidential. The Advisory Committee recognizes that, in cases in which the licensee or license applicant has only provided a personal address and not a public business address to a licensing board, the personal address should not be kept confidential.

The Advisory Committee also discussed the merits of providing licensees and license applicants an approach that would permit individuals to opt-in or affirmatively approve the disclosure of personal contact information or developing a form for use by the licensing entity that would make public certain information, but would exclude personal information about the individual from being disclosed to the public.

We are hopeful that we've provided enough guidance to assist you in evaluating proposed legislation regarding the confidentiality of personal contact information for professional and occupational licensees and applicants for those licenses. Please feel free to contact us or our committee staff if you have any questions or would like additional input.

Thank you for your consideration.

Sincerely,

Sen. David C. Burns, Chair
Right to Know Advisory Committee

cc: Right to Know Advisory Committee

Right to Know Advisory Committee

DRAFT Proposed Bill to Implement the Recommendations of the Public Records Exceptions Review Subcommittee

An Act to Implement Recommendations of the Right to Know Advisory Committee Regarding Public Records Exceptions

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §402, sub-§3, ¶C-1 is amended to read:

C-1. ~~Information contained in~~ Records that are a communication between a constituent and an elected official if the information communication contains any of the following information that:

(1) Is of a personal nature, consisting of:

- (a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
- (b) Credit or financial information;
- (c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;
- (d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or
- (e) An individual's social security number; or

(2) Would be confidential if it were in the possession of another public agency or official;

Notwithstanding this paragraph, the records described in this paragraph are public records if the information described in subparagraphs (1) and (2) may be redacted without significant effort by the agency or public official having custody or control of the record and such redactions are made prior to public release.

Sec. 2. 1 MRSA §402, sub-§3, ¶V is enacted to read:

V. Records containing any of the following information:

(1) Information of a personal nature, consisting of:

- (a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
- (b) Credit or financial information;
- (c) Information pertaining to the personal history, general character or conduct of an individual or any member of the individual's immediate family;

(d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or

(e) An individual's social security number; or

(2) Information that would be confidential if it were in the possession of another public agency or official.

SUMMARY

This bill amends Maine's Freedom of Access Act by amending an exception to the definition of public records covered by the Act. The current exception for certain personal information contained in a communication between a legislator and constituent is broadened to exclude the entire record of the communication, as opposed to the personal information contained in the communication. The record of this communication may be a public record, provided the agency or public official may easily redact the private information from the record and does in fact do so prior to release of such records to the public.

It also adds a new exception to the definition of public records covered by the Freedom of Access Act for any records that contain any certain personal information.

29-A M.R.S.A. §1301, sub §6-A is amended to read:

6-A. Confidentiality. Except as ~~authorized under~~ required by 18 United States Code, Section 2721(b), the Secretary of State may not disseminate information collected under subsection 6. ~~to any entity without specific authorization from the Legislature.~~ For every willful violation of this subsection, a person commits a civil violation for which a fine of not more than \$500 may be adjudged.

Fouts, Henry

From: Nale, Craig
Sent: Tuesday, September 13, 2016 10:14 AM
To: Fouts, Henry
Subject: FW: SSNs and FOAA
Attachments: 29MRSA §1301 sub §6-A amendment.doc

Follow Up Flag: Follow up
Flag Status: Flagged

From: Redmond, Barbara [<mailto:Barbara.Redmond@maine.gov>]
Sent: Tuesday, September 13, 2016 7:49 AM
To: Nale, Craig
Cc: Muszynski, Kristen; Morneault, Patty; O'Connell, Robert
Subject: RE: SSNs and FOAA

Hi Craig,

Attached is the amendment to 29-A MRSA § 1301, sub§-6A. Bob O'Connell, or someone from the dept. will be there to answer any questions that the committee may have. I'll let you know later today who it will be if Bob is not available.

Best,
Barbie

From: Nale, Craig [<mailto:Craig.Nale@legislature.maine.gov>]
Sent: Monday, September 12, 2016 4:49 PM
To: Redmond, Barbara
Subject: RE: SSNs and FOAA

Hi Barbie,

Thanks again for your help. We'll let the Advisory Committee know that the Secretary of State's office recommends repeal of paragraph R (the specific exemption), and that you recommend no change to 29-A MRSA § 1301, sub-§6-A. They are meeting on Wednesday, September 14 at 1:00 (they have a public hearing scheduled, but will likely also get to this later in the afternoon).

Best,
Craig

From: Redmond, Barbara [<mailto:Barbara.Redmond@maine.gov>]
Sent: Friday, September 09, 2016 3:11 PM
To: Fouts, Henry
Cc: Muszynski, Kristen; Nale, Craig; Morneault, Patty; O'Connell, Robert
Subject: RE: SSNs and FOAA

Hi Henry,

We've looked at the exceptions and find no real need for the specific exemption for the SOS in sub-§R. The language in 29-A MRSA § 1301, sub 6-A covers confidentiality of SSNs at the BMV and we are planning to clean up that language during the next legislative session.

I suggest the general exception in N remain on the books, unless you can ascertain that there are no laws or state rules that reference it. Here's an example from Title 21-A (in part):

§196-A. Use and distribution of central voter registration system information

1. Access to data from the central voter registration system. For the purposes of Title 1, section 402, information contained electronically in the central voter registration system and any information or reports generated by the system are confidential and may be accessed only by municipal and state election officials for the purposes of election and voter registration administration, and by others only as provided in this section.

I hope this helps.

Best,
Barbie

Barbara A. Redmond, Chief Deputy Secretary of State
Office of the Secretary of State | 148 State House Station | Augusta, ME 04333-0148
Tel: 207-626-8400 | Fax: 207-287-8598 | TTY users call Maine Relay 711
www.maine.gov/sos | [Facebook](#)

From: Nale, Craig [<mailto:Craig.Nale@legislature.maine.gov>]
Sent: Wednesday, August 24, 2016 3:43 PM
To: Redmond, Barbara
Cc: Fouts, Henry; Muszynski, Kristen
Subject: FW: SSNs and FOAA

Hi Barbie:

Thanks for speaking with me about the issue below this afternoon. Again, I'll be out of the office for a while before the Right to Know Advisory Committee meets on September 14, so in the meantime if you uncover anything further please feel free to get in touch with Henry Fouts.

Best,
Craig

From: Nale, Craig
Sent: Wednesday, August 24, 2016 11:59 AM
To: Muszynski, Kristen
Cc: Fouts, Henry
Subject: SSNs and FOAA

Hi Kristen,

Thank you again for your help gathering information for the Right to Know Advisory Committee's review of existing public records exceptions. Based on the SOS's response, which included a paragraph with some concerns from your legal counsel at BMV, the RTKAC would like to clean up the provisions affecting SSNs in Title 1 and Title 29-A that would affect the SOS's office. I've attached a copy of your response because it's been a few months since we last communicated.

My understanding is that 29-A MRSA § 1301 allows disclosure of SSNs pursuant to the federal Driver Privacy Protection Act, and that 1 MRSA § 402(3)(N) & (R) define SSNs generally (¶N) and SSNs in the possession of the Secretary of State (¶R) as not “public records.” (Because SSNs aren’t made confidential anywhere by statute, the ability to disclose SSNs pursuant to the Driver Privacy Protection Act isn’t affected, but the Secretary of State doesn’t have to release a SSN to a person making a request for a SSN because it is not a “public record.”)

I have looked back at the enactment of ¶R and did not find testimony or other rationale for what seems like a redundant exception for SSNs: the RTKAC questions whether there is any need for the general exception for SSNs at ¶N as well as the more specific exception at ¶R.

I’d be happy to speak with you or someone at BMV about this; however tomorrow (Thursday, August 25) is my last day in the office until the beginning of September. If no one is available to speak today or tomorrow, please instead contact Henry Fouts (copied here), who also staffs the Right to Know Advisory Committee.

Thanks,
Craig

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William Shorey
Eric Stout

STATE OF MAINE
RIGHT TO KNOW ADVISORY COMMITTEE

September 12, 2016

Chandler E. Woodcock, Commissioner
Department of Inland Fisheries and Wildlife
41 State House Station
Augusta, ME 04333

Dear Commissioner Woodcock:

The Right to Know Advisory Committee recently considered a request by the Department of Inland Fisheries and Wildlife to consider a revision to the language of Title 12, section 10110 of the Maine Revised Statutes. We thank you and your staff for your input; however, we are concerned about the scope of the proposed amendment and feel this matter may be better resolved by the Joint Standing Committee on Inland Fisheries and Wildlife of the Legislature.

The Advisory Committee first sought input from the Department on this provision of law, which pertains to the confidentiality of email address submitted to the Department, as part of our annual review of existing public records exceptions. The Department initially supported the continuation of the exception without change, but we sought further guidance about the merits of a blanket confidentiality provision for email address versus providing confidentiality only upon request.

The resulting proposed amendment provided confidentiality for email address submitted as part of an application for any license, permit or registration issued by the Department unless the applicant clearly indicated that the email address is not confidential. In addition, the proposed amendment included new exceptions to email confidentiality for contractors or other State agencies performing marketing services for the Department or conducting fish and game management research. A copy of the draft amendment the Advisory Committee considered is attached for your reference.

While we support the default confidentiality of email addresses for license, permit and registration applicants, as well as the possibility of a person indicating that his or her email address is not confidential, we do not feel we have sufficient information or understanding of the scope of the proposed exceptions to make a recommendation on that portion of your proposal.

We hope you will consider submitting a bill to effect changes to this provision to the 128th Legislature.

Sincerely,

Sen. David C. Burns, Chair
Right to Know Advisory Committee

PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE

Maine Freedom of Access Act - public records exceptions

Enacted 2005 - 2012

(Revised 9/14/2016)

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
1	1	402	2	Title 1, section 402, subsection 2, paragraph G, relating to committee meetings pertaining to interscholastic sports	Maine Principal's Association - Interscholastic Management Committee	Indefinitely postpone because this is a public meetings exception	Accepted Subcommittee recommendation
2	1	402	3	Title 1, section 402, subsection 3, paragraph C-1, relating to legislative working papers	Legislative Council, Executive Director	5-1 No Modification; amendments	
3	1	402	3	Title 1, section 402, subsection 3, paragraph N, relating to Social Security Numbers	Department of Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive Director; Administrative Office of the Courts		Accepted Subcommittee recommendation
4	1	402	3	Title 1, section 402, subsection 3, paragraph O, relating to personal contact information concerning public employees other than elected officials	Department of Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive Director; Administrative Office of the Courts	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
5	1	402	3	Title 1, section 402, subsection 3, paragraph P, relating to geographic information regarding recreational trails on private land	Department of Inland Fisheries and Wildlife; Department of Agriculture, Conservation and Forestry	No Modification	Accepted Subcommittee recommendation
6	1	402	3	Title 1, section 402, subsection 3, paragraph Q, relating to security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events for Department of Corrections or county jail	Department of Corrections	No Modification	
7	1	402	3	Title 1, section 402, subsection 3, paragraph R, relating to Social Security numbers in possession of the Secretary of State	Secretary of State	No Modification	Tabled to check with SOS.
8	1	538	3	Title 1, section 538, subsection 3, relating to InforME subscriber information	Information Resources of Maine (InforME)	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
9	1	1013	2	Title 1, section 1013, subsection 2, relating to the identity of a requestor of Commission on Governmental Ethics and Election Practices opinions	Commission on Governmental Ethics and Election Practices	No Modification	Accepted Subcommittee recommendation
10	1	1013	4	Title 1, section 1013, subsection 4, relating to Commission on Governmental Ethics and Election Practices records other than complaints	Commission on Governmental Ethics and Election Practices	No Modification	Accepted Subcommittee recommendation
11	1	1013	3-A	Title 1, section 1013, subsection 3-A, relating to complaint alleging a violation of legislative ethics	Commission on Governmental Ethics and Election Practices	No Modification	Accepted Subcommittee recommendation
12	4	1806		Title 4, section 1806, relating to certain information and records in the possession of the Maine Commission on Indigent Legal Services	Maine Commission on Indigent Legal Services	No Modification	Accepted Subcommittee recommendation
13	5	1541	10-B	Title 5, section 1541, subsection 10-B, relating to internal audit working papers of the State Controller	Department of Administrative and Financial Services - Office of the State Controller	Tabled to check again with FOAA contact	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
14	5	17057	3	Title 5, section 17057, subsection 3, relating to home contact information of Maine Public Employees Retirement System members, benefit recipients and staff	Maine Public Employees Retirement System	No Modification	Accepted Subcommittee recommendation
15	5	17057	4	Title 5, section 17057, subsection 4, relating to Maine Public Employees Retirement System private market investment activity	Maine Public Employees Retirement System	No Modification	Accepted Subcommittee recommendation
16	5	17057	5	Title 5, section 17057, subsection 3, relating to Maine Public Employees Retirement System employees personal and complaint and disciplinary information	Maine Public Employees Retirement System	No Modification	Accepted Subcommittee recommendation
17	5	90-B	7	Title 5, section 90-B, subsection 7, relating to the Address Confidentiality Program	Secretary of State	No Modification	Accepted Subcommittee recommendation
18	7	1052	2-A	Title 7, section 1052, subsection 2-A, relating to total potential acreage of genetically modified crops reported by individual manufacturers	Department of Agriculture, Conservation and Forestry	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
19	7	2231	3	Title 7, section 2231, subsection 3, relating to criminal history records provided to the Commissioner of Agriculture, Conservation and Forestry as part of an application to grow industrial hemp for commercial purposes	Department of Agriculture, Conservation and Forestry	Repealed by PL 2009, ch. 320, section 1	Accepted Subcommittee recommendation
20	8	1006	1	Title 8, section 1006, subsection 1, paragraph A, relating to information or records required by the Gambling Control Board for licensure: trade secrets and proprietary information	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
21	8	1006	1	Title 8, section 1006, subsection 1, paragraph B, relating to information or records required by the Gambling Control Board for licensure: would be unwarranted invasion of privacy of key executive, gaming employee or another person	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
22	8	1006	1	Title 8, section 1006, subsection 1, paragraph C, relating to information or records required by the Gambling Control Board for licensure: key executive or gaming employee compensation	Department of Public Safety	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
23	8	1006	1	Title 8, section 1006, subsection 1, paragraph D, relating to information or records required by the Gambling Control Board for licensure: financial, statistical and surveillance information related to the applicant	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
24	8	1006	1	Title 8, section 1006, subsection 1, paragraph E, relating to information or records required by the Gambling Control Board for licensure: creditworthiness, credit rating or financial condition of person or project	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
25	8	1006	1	Title 8, section 1006, subsection 1, paragraph F, relating to information or records required by the Gambling Control Board for licensure: information from other jurisdictions conditioned on remaining confidential	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
26	8	1006	1	Title 8, section 1006, subsection 1, paragraph G, relating to information or records required by the Gambling Control Board for licensure: information designated confidential under federal law	Department of Public Safety	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
27	8	1006	1	Title 8, section 1006, subsection 1, paragraph H, relating to information or records required by the Gambling Control Board for licensure: specific personal information, including Social Security number, of any individual	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
28	8	1006	3	Title 8, section 1006, subsection 3, relating to records and information developed as part of suitability requirement to select operator of central site monitoring system, held by Gambling Control Board and Dept. of Public Safety	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
29	8	1006	4	Title 8, section 1006, subsection 4, relating to financial, statistical and surveillance information from the central site monitoring system held by the Gambling Control Board and the Dept. of Public Safety	Department of Public Safety	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
30	8	1007	2	Title 8, section 1007, subsection 2, relating to information or records received by the Gambling Control Board or Department of Public Safety from another agency pursuant to agreement	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
31	8	1008		Title 8, section 1008, relating to information or records used or produced by the Gambling Control Board or Department of Public Safety in connection with hearings, proceedings or appeals pursuant to Title 8, section 1052	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
32	8	1052		Title 8, section 1052, relating to reports, information or records compiled by the Gambling Control Board and Dept. of Public Safety concerning noncompliance with or violation of the chapter by an applicant, licensee, owner or key executive	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
33	8	270-A		Title 8, section 270-A, relating to records and information included in application or materials required for issuance of commercial track license	Department of Agriculture, Conservation and Forestry	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
34	9-A	6-105-A		Title 9-A, section 6-105-A, last paragraph, relating to information concerning uniform multistate licensing system provided to Consumer Credit Protection by other jurisdictions	Department of Professional and Financial Regulation - Bureau of Consumer Credit Protection	No Modification	Accepted Subcommittee recommendation
35	12	8005	1	Title 12, section 8005, subsection 1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	Department of Agriculture, Conservation and Forestry	No Modification	Accepted Subcommittee recommendation
36	12	8005	2	Title 12, section 8005, subsection 2, relating to Social Security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs	Department of Agriculture, Conservation and Forestry	No Modification	
37	12	8005	4	Title 12, section 8005, subsection 4, relating to forest management information designated confidential by agency furnishing the information	Department of Agriculture, Conservation and Forestry	5-1 No Modification	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
38	12	10110		Title 12, section 10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license	Department of Inland Fisheries and Wildlife	No Modification; Send letter to IFW Committee expressing approval of opt-in language from DIFW but concern about marketing and contractors language	
39	12	12551-A	10	Title 12, section 12551-A, subsection 10, relating to smelt dealers reports, including name, location, gear and catch	Department of Inland Fisheries and Wildlife	No Modification	
40	14	6321-A	4	Title 14, section 6321-A, subsection 4, relating to the financial information disclosed in the course of mediation under the foreclosure mediation program	Administrative Office of the Courts	No Modification	
41	17-A	1176	1	Title 17-A, section 1176, subsection 1, relating to information that pertains to current address or location of crime victims	Department of Public Safety	No Modification	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
42	17-A	1176	5	Title 17-A, section 1176, subsection 5, relating to request by crime victim for notice of release of defendant	Department of Corrections	No Modification	
43	20-A	13004	2-A	Title 20-A, section 13004, subsection 2-A, relating to complaints, charges and accusations concerning certification and registration of educational personnel	Department of Education	Review with full Advisory Committee	
44	21-A	1003	3-A	Title 21-A, section 1003, subsection 3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices	Maine Commission on Governmental Ethics and Election Practices	No Modification	Accepted Subcommittee recommendation
45	21-A	1125	3	Title 21-A, section 1125, subsection 3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
46	21-A	1125	2-B	Title 21-A, section 1125, subsection 2-B, relating to records of individuals who made Clean Elections gubernatorial seed money contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices	Indefinitely postpone because citizen's initiation repeals this exception	Accepted Subcommittee recommendation
47	21-A	196-A		Title 21-A, section 196-A, relating to information contained electronically in the central voter registration system	Secretary of State	No Modification	Accepted Subcommittee recommendation
48	22	1494		Title 22, section 1494, relating to occupational disease reporting	Department of Health and Human Services	No Modification	Accepted Subcommittee recommendation
49	22	2425	8	Title 22, section 2425, subsection 8, relating to medical marijuana registry identification cards	Department of Health and Human Services	No Modification	Accepted Subcommittee recommendation
50	22	1711-C	20	Title 22, section 1711-C, subsection 20, relating to hospital records concerning health care information pertaining to an individual	HealthInfoNet	Repeal because information is already adequately protected and FOAA doesn't apply to HealthInfoNet	Tabled

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
51	22	2153-A		Title 22, section 2153-A, relating to information provided to the Department of Health and Human Services by the U.S. Department of Agriculture and the U.S. Food and Drug Administration that is confidential under federal law	Department of Health and Human Services	Tabled 8/17; review response from ACF on 9/14	
52	22	4087-A	6	Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman	Child Welfare Ombudsman	No Modification	Accepted Subcommittee recommendation
53	24-A	2736	2	Title 24-A, section 2736, subsection 2, relating to insurer rate filings on individual health insurance policies and supporting information, in regards to protected health information and descriptions of the amount and terms or conditions or reimbursement in a contract between an insurer and a 3rd party	Department of Professional and Financial Regulation - Bureau of Insurance	No review. Not a new PR exception.	Accepted Subcommittee recommendation

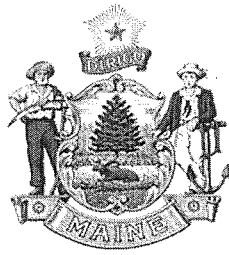
Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
54	25	4202		Title 25, section 4202, relating to records and information connected in any way with the work of a critical incident stress management team for law enforcement personnel	Department of Public Safety		
55	29-A	1301	6-A	Title 29-A, section 1301, relating to the social security number of an applicant for a driver's license or nondriver identification card	Secretary of State	No Modification	Tabled to check with SOS.
56	29-A	2251	7-A	Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in an accident report database	Department of Public Safety		
57	29-A	2117-A	4	Title 29-A, section 2117-A, relating to data collected or retained through the use of an automated license plate recognition system	Department of Public Safety; Department of Transportation		
58	32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	Department of Public Safety		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
59	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board	Department of Public Safety		
60	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to information about a person receiving emergency medical services as part of an application for credentialing by Emergency Medical Services Board	Department of Public Safety		
61	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to the trauma incidence registry under section 97-B	Department of Public Safety		
62	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board	Department of Public Safety		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
63	30-A	4706	1	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities	Maine State Housing Authority (MaineHousing)	No Modification	Accepted Subcommittee recommendation
64	34-A	11221	13	Title 34-A, section 11221, subsection 13, relating to disclosure of certain sex offender registry information	Department of Public Safety		
65	34-A	11221	9-A	Title 34-A, section 11221, subsection 9-A, relating to certain sex offender registry information	Department of Public Safety		
66	34-B	1931	6	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board	Mental Health Homicide, Suicide, and Aggravated Assault Review Board (MHSSAARB)		
67	34-B	3864	12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	Department of Public Safety		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
68	35-A	122	1-B	Title 35-A, section 122, subsection 1-B, paragraph G, relating to information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use in the context of energy infrastructure corridors	Interagency Review Panel (Governor's Energy Office)	No Modification	Accepted Subcommittee recommendation
69	35-A	10106		Title 35-A, section 10106 relating to records of the Efficiency Maine Trust and its board	Efficiency Maine		
70	36	6271	2	Title 36, section 6271, subsection 2, relating to an application, information submitted in support of an application and files and communications in relation to a municipal property tax deferral program for senior citizens	Maine Municipal Association	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
71	38	1310-B	2	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	Department of Environmental Protection	No Modification	Accepted Subcommittee recommendation
72	38	580-B	11	Title 38, section 580-B, subsection 11, relating to records held by the Department of Environmental Protection or its agents regarding individual auctions administered under the carbon dioxide cap-and-trade program	Department of Environmental Protection	No Modification	Accepted Subcommittee recommendation



**STATE OF MAINE
128th LEGISLATURE
FIRST REGULAR SESSION**

**Eleventh Annual Report
of the
Right to Know Advisory Committee**

January 2017

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Mary Ann Lynch
Judy Meyer
Kelly Morgan
Paul Nicklas
Christopher Parr
Linda Pistner
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William Shorey
Eric Stout

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EXECUTIVE SUMMARY

[to be added]

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I. INTRODUCTION

This is the eleventh annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The Advisory Committee's authorizing legislation, located at Title 1, section 411, is included in **Appendix A**. Previous annual reports of the Advisory Committee can be found on the Advisory Committee's webpage at www.maine.gov/legis/opla/righttoknowreports.htm.

The Right to Know Advisory Committee has 17 members. The chair of the Advisory Committee is elected annually by the members. Current Advisory Committee members are:

Sen. David C. Burns Chair	<i>Senate member of Judiciary Committee, appointed by the President of the Senate</i>
Rep. Kimberly Monaghan	<i>House member of Judiciary Committee, appointed by the Speaker of the House</i>
Suzanne Goucher	<i>Representing broadcasting interests, appointed by the Speaker of the House</i>
Stephanie Grinnell	<i>Representing newspaper and other press interests, appointed by the President of the Senate</i>
A.J. Higgins	<i>Representing broadcasting interests, appointed by the President of the Senate</i>
Richard LaHaye	<i>Representing law enforcement interests, appointed by the President of the Senate</i>
Mary Ann Lynch	<i>Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court</i>
Judy Meyer	<i>Representing newspaper publishers, appointed by the Speaker of the House</i>
Kelly Morgan	<i>Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House</i>
Paul Nicklas	<i>Representing municipal interests, appointed by the Governor [appointed effective September 15, 2016]</i>
Christopher Parr	<i>Representing state government interests, appointed by the Governor</i>

Linda Pistner	<i>Attorney General's designee</i>
Harry Pringle	<i>Representing school interests, appointed by the Governor</i>
Helen Rankin	<i>Representing the public, appointed by the Speaker of the House</i>
Luke Rossignol	<i>Representing the public, appointed by the President of the Senate</i>
William Shorey	<i>Representing county or regional interests, appointed by the President of the Senate</i>
Eric Stout	<i>A member with broad experience in and understanding of issues and costs in multiple areas of information technology, appointed by the Governor</i>

The complete membership list of the Advisory Committee, including contact information, is included in **Appendix B**.

II. COMMITTEE DUTIES

The Right to Know Advisory Committee was created to serve as a resource and advisor about Maine's freedom of access laws. The Advisory Committee's specific duties include:

- Providing guidance in ensuring access to public records and public proceedings;
- Serving as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know;
- Supporting the provision of information about public access to records and proceedings via the Internet;
- Serving as a resource to support training and education about Maine's freedom of access laws;
- Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the state of Maine's freedom of access laws and the public's access to public proceedings and records;
- Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;

- ❑ Examining inconsistencies in statutory language and proposing clarifying standard language; and
- ❑ Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public.

In carrying out these duties, the Advisory Committee may conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss and consider solutions to problems concerning access to public proceedings and records.

The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws. The Advisory Committee is pleased to work with the Public Access Ombudsman, Brenda Kielty. Ms. Kielty is a valuable resource to the public and public officials and agencies.

By law, the Advisory Committee must meet at least four times per year. During 2016, the Advisory Committee met on June 22, July 20, August 17, September 14 and October _____. On September 14, 2016, the Advisory Committee held a public hearing to take comments and suggestions about how the Freedom of Access Act is working and how it might be improved, consistent with its goals of giving citizens adequate access to records and meetings of decision making bodies of government. The Advisory Committee specifically requested testimony on the following topic: *Considering the sensitive nature of certain information held by government entities, how could public access to government meetings and records be improved?* Each meeting was open to the public and was also accessible through the audio link on the Legislature's webpage.

The Advisory Committee has also established a webpage, which can be found at www.maine.gov/legis/opla/righttoknow.htm. Agendas, meeting materials and summaries of the meetings are available on the webpage.

III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES

By law, the Advisory Committee serves as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know. In carrying out this duty, the Advisory Committee believes it is useful to include in its annual reports a digest of recent developments in case law relating to Maine's freedom of access laws. For its eleventh annual report, the Advisory Committee has identified and summarized the following Maine Supreme Judicial Court decision related to freedom of access issues.

Hughes Bros. v. Town of Eddington

In *Hughes Bros. v. Town of Eddington*, 2016 ME 13, 130 A.3d 978, Hughes Bros., Inc., a landowner seeking a permit to create a quarry, appealed a Superior Court decision determining that the Town of Eddington conducted a valid executive session for the purpose of consulting with counsel. The landowner sought an injunction directing the town to cease and desist from holding a public vote on proposed moratorium on quarries, and a declaration that any moratorium that might be approved was void because town violated open meeting requirements of Freedom of Access Act (FOAA) by holding a joint executive session of the board of selectmen and planning board. The Law Court held that the boards conducted a valid executive session, invoked for purpose of consulting with legal counsel regarding wording in proposed moratorium ordinance, and that FOAA does not prohibit municipal boards from holding executive sessions jointly in order to meet with legal counsel about how to comply with the law in carrying out their prospective duties.

In order for an executive session to be valid under FOAA, the following elements must be present: the executive session must be publicly announced; the purpose of the executive session must be permitted by law and described clearly; the executive session must be confined to statutorily authorized matters; it may not include any final approval of any official action; and records must be kept that are adequate for purposes of judicial review if an action is challenged. In this case, the administrative record demonstrated that the Town met its burden to show that all of these elements were present. The executive session was held for the limited and authorized purpose of consulting with counsel to draft a legally sound proposed ordinance for consideration at a later public meeting and the municipal ordinance was approved after consultation with counsel and public deliberation and vote in a meeting open to the public. And further, the Law Court stated that FOAA contains no prohibition against municipal boards holding joint executive sessions and the mere fact that boards share in the advice of counsel in a combined executive session is not a violation of FOAA.

IV. RIGHT TO KNOW ADVISORY COMMITTEE SUBCOMMITTEE

In prior years, the Right to Know Advisory Committee has divided its workload among various subcommittees that have reported recommendations back to the full Advisory Committee for consideration and action. In 2016, the Advisory Committee chose to appoint one subcommittee: the Public Records Exceptions Subcommittee. The Public Records Exceptions Subcommittee's focus is to review and evaluate public records exceptions as required of the Advisory Committee pursuant to 1 MRSA §433, sub-§2-A. The guidelines in the law require the Advisory Committee to review all public records exceptions enacted after 2004 and before 2013 no later than 2017.

As part of its review, the Subcommittee reached out to state and local bodies for information, comments and suggestions with respect to the relevant public records exceptions administered by that body. All inquiries to the public bodies were coupled with an invitation for a representative of the public body to attend the Subcommittee meeting to provide any additional information or answer questions from the Subcommittee. Review was undertaken in light of the criteria codified at 1 MRSA §434, and, after discussion and a vote, recommendations for either keeping a provision with no modification or otherwise striking or amending the provision were passed along to the full Advisory Committee for a final vote. Representative Monaghan was the chair of the Subcommittee and A.J. Higgins, Mary Ann Lynch, Chris Parr, Linda Pistner, Helen

Rankin and Eric Stout served as members. As a legislator and the Advisory Committee chair, Senator Burns was an ex officio member.

Exceptions reviewed by the Subcommittee in 2015, but considered by the full Advisory Committee in 2016: The following exceptions were reviewed by the Subcommittee at its December 1, 2015 meeting, but were not able to be considered by the full Advisory Committee until 2016. The recommendations are summarized below.

Note: Reference numbers below are based on a spreadsheet of public records exceptions created by staff to facilitate the review. The spreadsheet is available on the Right to Advisory Committee's website, www.maine.gov/legis/opla/righttoknow.htm.)

Ref# 4: 1 M.R.S. §402, Sub-§3, ¶O, relating to personal contact information concerning public employees other than elected officials

The Subcommittee voted 4-0 to recommend no modification.

Ref# 9: 1 M.R.S. §1013, Sub-§2, relating to the identity of a requestor of Commission on Governmental Ethics and Election Practices opinions

The Subcommittee voted 3-0 to recommend no modification. According to the Ethics Commission this exception has not been used in the last 13 years, so they believe the exception is clear. The exception is important due to the sensitive nature of this information.

Ref# 10: 1 M.R.S. §1013, Sub-§4, relating to Commission on Governmental Ethics and Election Practices records other than complaints

The Subcommittee voted 3-0 to recommend no modification.

Ref# 11: 1 M.R.S. §1013, Sub-§3-A, relating to complaint alleging a violation of legislative ethics

The Subcommittee voted 3-0 to recommend no modification.

Ref# 38: 12 MRSA §10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license

The Subcommittee voted to table this item.

Ref# 44: 21-A M.R.S. §1003, Sub-§3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices

The Subcommittee voted 4-0 to recommend no modification.

Ref# 45: 21-A M.R.S. §1125, Sub-§3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet

The Subcommittee voted 4-0 to recommend no modification. The exception involves financial information not ordinarily available to the public.

Ref# 46: 21-A M.R.S. §1125, Sub-§2-B, relating to records of individuals who made Clean Elections gubernatorial seed money contributions over the Internet

The Subcommittee voted 4-0 to indefinitely postpone this item, as a recently passed citizen initiative repeals this provision.

Ref# 47: 21-A M.R.S. §196-A, relating to information contained electronically in the central voter registration system

The Subcommittee voted 4-0 to recommend no modification. A representative of the Department of the Secretary of State appeared before the Subcommittee and explained the need for the continuation of this exception for central voter registration system data. The Department had asked the Legislature for this provision because FOAA is intended to illuminate the activities of government – this data only pertains to personal information of voters. This policy reason still holds today. Releasing this data would raise issues of voter fraud and identity theft. A bill that would narrow this exception is heading to the Veterans and Legal Affairs Committee for the upcoming legislative session.

Ref# 49: 22 M.R.S. §2425, Sub-§8, relating to medical marijuana registry identification cards

The Subcommittee voted 3-0 to recommend no modification.

Ref# 52: 22 M.R.S. §4087-A, Sub-§6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman

The Subcommittee voted 3-0 to recommend no modification.

Ref# 55: 29-A M.R.S. §1301, Sub-§6-A, relating to the social security number of an applicant for a driver's license or non-driver identification card

The Subcommittee voted 3-0 to recommend no modification. The agency survey response indicated concern about a conflict with this exception to the public records covered under FOAA with a provision of Maine's motor vehicle laws that permits disclosure of Social Security Numbers pursuant to the federal Driver Privacy Protection Act, 18 U.S.C. §2721(a)(2). The group discussed this concern and concluded there was no conflict, because the public records exception allows, but does not require, nondisclosure of the SSNs (i.e., they are not designated as "confidential").

Ref# 63: 30-A M.R.S. §4706, Sub-§1, relating to municipal housing authorities

The Subcommittee voted 3-0 to recommend no modification

Ref# 68: 35-A M.R.S. §122, Sub-§1-B, ¶G, relating to information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use in the context of energy infrastructure corridors

The Subcommittee voted 3-0 to recommend no modification

Ref# 69: 35-A M.R.S. §10106, relating to records of the Efficiency Maine Trust and its board

The Subcommittee voted 3-0 to table this item. The Subcommittee received comments from Efficiency Maine Trust that the word “and” at the end of subsection 1, paragraph 3 of this section should instead be an “or.” The Subcommittee was reluctant to make a change without seeing the proposed amendment in formally.

Ref# 70: 36 M.R.S. §6271, Sub-§2, relating to an application, information submitted in support of an application and files and communications in relation to a municipal property tax deferral program for senior citizens

The Subcommittee voted 3-0 to recommend no modification

Ref# 71: 38 M.R.S. §1310-B, Sub-§2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans

The Subcommittee voted 3-0 to recommend no modification

Ref# 72: 38 M.R.S. §580-B, Sub-§11, relating to records held by the Department of Environmental Protection or its agents regarding individual auctions administered under the carbon dioxide cap-and-trade program

The Subcommittee voted 3-0 to recommend no modification

Exceptions reviewed by the Subcommittee in 2016: During 2016, the Public Records Exception Subcommittee held three meetings. The Subcommittee’s recommendation on each exception is summarized below.

Ref# 1: 1 M.R.S. §402, Sub-§2, ¶G, relating to committee meetings pertaining to interscholastic sports

The Subcommittee voted 4-0 to indefinitely postpone this item. The Maine Principals Association responded to the request for information that it is not a public body; the exception also pertains to meetings, not public records. The Subcommittee interpreted the public records exceptions review requirement in the Freedom of Access Act to require only a review of

exceptions to the definition of “public records.” The Subcommittee discussed the possibility of further deliberation on this point with the full Advisory Committee.

Ref# 2: 1 M.R.S. §402, Sub-§3, ¶C-1, relating to communications between a constituent and an elected official

The Subcommittee spent considerable time discussing this exception. Several members expressed support for continuation of the exception with no modifications as it is narrowly tailored to protect private constituent information.

Mr. Parr noted that this is another example of information being designated confidential as opposed to the entire record that contains that information being designated confidential, and that this creates a burden on the agencies and public bodies because of increased time required for searching for and redacting the confidential information. He expressed that this was his general problem with these types of public records exceptions and his being in favor of a broader “records” standard for this confidentiality provision.

After some further discussion in the Subcommittee, Mr. Parr made a motion, seconded by Mr. Stout, that the Subcommittee recommend that this public records exception be amended to apply more broadly to the entire record of constituent communication if it contains any of the types of information listed in the current exception. However, the amendment would also require the agency to provide the record with such information redacted, if it did not constitute an undue burden on the agency. The vote was unanimous of those present. This proposed amendment will be put on the agenda for the next full Advisory Committee meeting.

Sen. Burns stated that it was time for the Legislature to have a better disclaimer to make it clearer to the public that constituent communications with legislators may become public record.

Mr. Stout made another motion, proposing that the subcommittee recommend creating a new public records exception along similar lines to the proposed amendment. The new public records exception would exempt from the definition of “public records” any records containing the information described in 1 M.R.S. §402(3)(C-1)(1) and (2) (e.g., an individual’s medical information, credit or financial information, etc.). Sen. Burns expressed discomfort with applying such a broadly applicable public records exception, and wondered about the unintended consequences of such a change. Rep. Monaghan shared this concern, but stated her support for the motion for the purpose of having a discussion of the proposal in the full Advisory Committee. The vote in favor of the motion was 5-1. This discussion will be put on the agenda for the next full Advisory Committee meeting.

Ref# 6: 1 M.R.S. §402, Sub-§3, ¶Q, relating to security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events for Department of Corrections or county jail

The Subcommittee voted 6-0 to recommend no modification to the current exception.

Ref# 13: 5 M.R.S. §1541, Sub-§10-B, relating to internal audit working papers of the State Controller

The Subcommittee voted 6-0 to table this item in order to give staff an opportunity to contact The Office of the State Controller again, requesting feedback from the agency regarding this exception.

Ref# 35: 12 M.R.S. §8005, Sub-§1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres

This item was previously tabled in order for staff to solicit stakeholder input. The one stakeholder group that responded stated that it had no problem with the current exception. The Subcommittee voted 6-0 to recommend no modification to the current exception.

Ref# 36: 12 M.R.S. §8005, Sub-§2, relating to Social Security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs

This item was previously tabled in order for staff to solicit stakeholder input. The one stakeholder group that responded stated that it had no problem with the current exception. The Subcommittee voted 6-0 to recommend no modification to the current exception.

Ref# 37: 12 M.R.S. §8005, Sub-§4, relating to forest management information designated confidential by agency furnishing the information

This item was previously tabled in order for staff to solicit input from the stakeholders identified in the Department of Agriculture, Conservation and Forestry's survey response. No recommended changes were received from stakeholders and the agency itself had recommended no changes in its original response.

Mr. Parr objected to this provision on the basis that it was another example of information being designated confidential as opposed to the entire record itself being confidential, creating a burden on the agency or public body to search for and redact such information.

Ms. Lynch made a motion to recommend no modification to the current exception, reasoning that this exception was involving proprietary and competitive information and that the agency had recommended its continuation. The Subcommittee voted 5-0, with one abstention, to recommend no modification to the current exception.

Ref# 38: 12 M.R.S. §10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license

This item was previously tabled in order for staff to gather additional information from the Department of Inland Fisheries and Wildlife regarding how a member of the public signified their wish for the department to keep the individual's email address confidential, whether this was treated as an opt-in or opt-out type of system.

The department provided draft legislation expanding the exception to individual's applying for permits and registrations as well, and designating this information as confidential. Under the proposal, the commissioner would be permitted to allow a member of the public to clearly indicate that the individual's email address not be kept confidential (an opt-in system). The proposal included additional exceptions to the confidentiality to allow the department to disclose these email addresses to a contractor or state agency for marketing or wildlife management purposes.

Mr. Stout explained the origin of the current public records exception, being aware of the agency responding to a FOAA request for all email addresses contained in the department's electronic licensing system for commercial purposes. He noted that the term "contractor" in the proposed exception to the confidentiality requirement should be clarified.

Mr. Parr made a motion, seconded by Sen. Burns, to 1) recommend no modification to the current public records exception and 2) ask the full Advisory Committee to review the department's proposed legislation for possible action. Ms. Lynch expressed her lack of support for the second part of the motion, noting that the proposed legislation would be more appropriately vetted through the Legislature's Inland Fisheries and Wildlife Committee. Sen. Burns agreed and the motion was withdrawn.

Mr. Parr expressed his support for the draft legislation's opt-in approach and broader application, but echoed concerns about allowing the use of this information by contractors. Rep. Monaghan expressed some concern about the patchwork of public records exceptions regarding this type of personal information.

Mr. Parr made a motion, seconded by Ms. Lynch, to recommend no modification to the current public records exception. The motion was amended at the suggestion of Mr. Stout, to send a letter to the Department of Inland Fisheries and Wildlife to relay the Subcommittee's concerns regarding the draft legislation's allowing the department to use otherwise confidential email addresses for marketing purposes without permission. The Subcommittee voted in favor of the motion, 6-0.

Ref# 39: 12 M.R.S. §12551-A, Sub-§10, relating to smelt dealers reports, including name, location, gear and catch

This item was previously tabled. Staff reviewed the agency response, recommending no changes to current law. Ms. Lynch moved to recommend no modification, noting that this exception goes to the competitive nature of the fishery.

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 40: 14 M.R.S. §6321-A, Sub-§4, relating to the financial information disclosed in the course of mediation under the foreclosure mediation program

Ms. Lynch spoke to the importance of this confidentiality provision to the process of foreclosure mediation, with much of this information being personal financial information.

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 41: 17-A M.R.S. §1176, Sub-§1, relating to information that pertains to current address or location of crime victims

Mr. Parr made a motion, seconded by Mr. Stout, to recommend no modification to the current exception. The motion carried, 5-0.

Ref# 42: 17-A M.R.S. §1176, Sub-§5, relating to request by crime victim for notice of release of defendant

Mr. Parr made a motion, seconded by Ms. Lynch, to recommend no modification to the current exception. The motion carried, 5-0.

Ref# 50: 22 M.R.S. §1711-C, Sub-§20, ¶N, relating to hospital records concerning an individual's health care information

The Subcommittee spent considerable time at voted 4-0 to recommend repealing this exception, provided the statute was explicitly clear that all other federal laws concerning confidentiality and privacy applied. HealthInfoNet, the custodian of the records subject to this exception, responded to the request for information that it is not a public body subject to FOAA. Staff reviewed case law regarding how to determine if a body is a public body subject to FOAA; the Subcommittee determined that HealthInfoNet is not a public body. Because the exception is inoperative, the Subcommittee recommended its repeal.

Ref# 51: 22 M.R.S. §2153-A, relating to information provided to the Department of Health and Human Services by the U.S. Department of Agriculture and the U.S. Food and Drug Administration that is confidential under federal law

Staff related the Department of Health and Human Services (DHHS) survey response, where the agency had responded that the Department of Agriculture, Conservation and Forestry (ACF) was the custodian of these records because 22 M.R.S. §2153 gives that department the power to promulgate appropriate regulations. ACF provided no response to staff questions.

Mr. Parr noted that this was an example of a specific public records exception for information that is already made confidential under another statute, in this case a federal statute. Ms. Lynch made a motion to recommend no modification to the current exception, but the motion failed. Mr. Parr asked staff to attempt to gather more information from the agencies to determine where the records actually are.

The Subcommittee voted 5-0 to table this item until the next meeting.

[additional discussion from September 14th Subcommittee to be added]

V. COMMITTEE PROCESS

This year, the Right to Know Advisory Committee held five committee meetings, which are summarized below.

Summary of June 22, 2016 meeting

Summary of the Right To Know Advisory Committee duties and powers

Staff reviewed the Advisory Committee's duties as set forth in Maine's Freedom of Access Act (FOAA) at 1 MRSA §411, sub-§6.

Summary of actions of the 127th Legislature, Second Regular Session, affecting FOAA/RTKAC recommendations

Staff reviewed the legislative outcome of the recommendations included in the Advisory Committee's January 2016 report. The 2016 report included proposed legislation regarding remote participation by members of public bodies, in response to Advisory Committee's recommendation, the Judiciary Committee created LD 1586, "An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings." A majority of the Judiciary Committee voted "Ought Not to Pass" on LD 1586, however a minority of the Judiciary Committee proposed an amendment that would have required a governmental entity to adopt a written policy governing remote participation by members that also describes how the policy meets the principles of FOAA. The bill and the amendment were not enacted.

The Judiciary Committee considered another remote participation bill, LD 1241, "An Act To Increase Government Efficiency," which was carried over from the First Regular Session to the Second Regular Session. As finally enacted, LD 1241 permits the board or commission of each of four State bonding authorities (the Maine Governmental Facilities Authority, the Maine Health and Higher Educational Facilities Authority, the Maine State Housing Authority and the Maine Municipal Bond Bank) to conduct public proceedings with members participating via remote access technology in certain circumstances (i.e., the member is needed for a quorum, illness of the member, weather that makes driving hazardous, or unexpected traffic delays or vehicle breakdowns when the commissioner is traveling to the meeting). LD 1241 was finally enacted as Public Law 2016, chapter 449.

Mr. Parr asked what should be inferred from this legislation regarding what authority is needed in law before a body may allow remote participation by its members at public proceedings. Staff noted that there still seem to be two approaches clarifying remote participation in public meetings: 1) specifying broad authority for remote participation in FOAA itself, and 2) providing specific authority for a governmental entity in its statutes. Staff also noted the Governor's position that remote participation is already permitted under FOAA as long as all FOAA requirements are otherwise met, as stated in the veto message to LD 1809, "An Act Concerning

Meetings of Boards of Trustees and Governing Bodies of Quasi-municipal Corporations and Districts That Provide Water, Sewer and Sanitary Services”; that veto was not overridden by the 126th Legislature.

Ms. Goucher stated that she would like to see the Advisory Committee attempt another recommendation in this area, because the issue is not going away until there is some guidance and clarity given. The Advisory Committee did not take a formal action on this request.

Summary of actions of the 127th Legislature, Second Regular Session, affecting FOAA: Proposed public records exceptions reviewed by Judiciary Committee

Staff summarized several bills containing proposed public records exceptions referred from policy committees to the Judiciary Committee for review in the Second Regular Session: LD 466, “An Act To Increase Competition and Ensure a Robust Information and Telecommunications Market,” which was referred by the Energy, Utilities and Technology Committee; LD 1467, “An Act Regarding Maine Spirits,” which was referred by the Veterans and Legal Affairs Committee; LD 1498, “An Act To Clarify Medicaid Managed Care Ombudsman Services,” which was referred by the Health and Human Services Committee; LD 1499, “An Act To Increase the Safety of Social Workers”; LD 1578, “An Act To Update Maine's Solid Waste Management Laws,” which was referred by the Environment and Natural Resources Committee;

Review of public records exceptions enacted from 2005- 2012 pursuant to 1 MRSA §433

Staff reviewed the status of the Advisory Committee’s review of existing public records exceptions, which the Advisory Committee began last year and is due by 2017. The Public Records Exceptions Review Subcommittee reviewed a number of exceptions after the Advisory Committee’s last meeting in 2015 that will be presented for final action by the full committee in 2016. Next year, the Advisory Committee will begin reviewing all existing public records exceptions found in Titles 1 through 7-A. That review will be due by 2019.

Staff provided an update on a potential issue identified in 2015 involving the Department of Education’s ability to share teacher disciplinary information with other states because of the breadth of confidentiality provided at 20-A MRSA §13004, sub-§2-A. In 2015 the Subcommittee recommended to the full Advisory Committee that it draft legislation, with direction from the Department of Education, to address the issue. The Advisory Committee decided not to recommend a change to the statute, and instead notified the Education and Cultural Affairs Committee about this issue and the issue of teacher discipline confidentiality more generally. The Education and Cultural Affairs Committee determined that the Department does not seek to share confidential disciplinary information with other states. It seems this issue is resolved for both the Right to Know Advisory Committee and the Education Committee.

Potential topics and projects for 2016

- Confidentiality of hazardous material transfer by railroads

Staff related a request from the Judiciary Committee for the Advisory Committee to include in its public records exceptions review a provision enacted by LD 484 in 2015 and now codified at 1 MRSA §402(3)(U), which makes information held by the Department of Environmental Protection relating to the transfer of hazardous material by railroads confidential. Mr. Pringle moved for the Advisory Committee to take action on this item. The vote was unanimous of those present that the full Advisory Committee discuss the issue.

- *Confidentiality of personal contact information for professions and occupations regulated by the State*

Staff related a request from the Judiciary Committee for the Advisory Committee to develop comprehensive recommendations for the treatment of personal contact information for professions and occupations regulated by the State. In the Second Regular Session of the 127th Legislature, LD 1499 enacted a new confidentiality provision for social worker licensees' and license applicants' addresses and telephone numbers; in connection, the Judiciary Committee sought a uniform policy for all licensing information. Staff noted that some licensing boards do make certain licensee information confidential in statute already. The Advisory Committee discussed how a uniform policy would need to balance the safety interests of the public in having access to licensee information with the privacy interests of licensees and license applicants.

After conversation on the topic, Mr. Parr moved for the full Advisory Committee to take up this topic in its business this year. All present were in agreement except for Mr. Higgins and Ms. Goucher. Mr. Higgins stated that his reluctance was due to concern with how far this would go toward confidentiality, and concern with expanding confidentiality even when licensees are not requesting it. Ms. Goucher stated that her opposition to the vote was because we already have a uniform policy – that these records are public – and any deviation from that requires a group to come before the Legislature to make its case and seek an exception. Mr. Higgins noted that it seemed we are trying to turn current policy on its head. Sen. Burns stated that it would be good for the Judiciary Committee to have guidelines to help in its considerations of future confidentiality proposals in the licensing area. Rep. Monaghan agreed it is important to have a uniform policy as new requests for confidentiality are inevitable. Ms. Pistner stated there were obviously some competing concerns, but expressed that she thought a compromise could be reached (for example, if a personal phone number is to be confidential, the licensee would have to provide a work number that would be open to the public).

Sen. Burns reiterated that the Judiciary Committee was not looking to change policy, but wanted to establish factors to consider when making decisions about new confidential licensing provisions. He requested staff provide some written material before the next meeting regarding this licensee confidentiality topic.

- *FOIA assistance for indigent members of the public*

The Advisory Committee next considered the request of Ken Capron for the development of a mechanism to help provide funds for indigent complainants to bring forward FOIA cases and the possibility of developing a standard court form to help pro se indigent complainants. The Advisory Committee took no action on this topic.

- *FOAA agency time and cost estimates, fee waiver policies and remedies for requesters*

Jack Comart of Maine Equal Justice Partners emailed the group in April with 5 suggestions: 1) require agencies to provide an estimate of time and cost for each separate component of a request for information; 2) require agencies to publically post and make available their fee waiver policy; 3) require that agencies grant fee waiver requests based upon reasonable standards; 4) clarify when estimates of time and cost must be provided by the agency; and 5) provide some recourse for requesters of information for agency action that may be arbitrary or capricious.

Staff reviewed current agency FOAA response time requirements, and also noted that while FOAA allows an agency to waive fees under FOAA, there is no requirement that the agency have a fee waiver policy or publically post such policy. The Advisory Committee took no action on this topic.

Discussion of any additional topics and projects for 2016

Sen. Burns gave the group notice that there would be an agenda item relating to a potential issue involving executive sessions for the Committee's consideration at the next meeting. The discussion was opened up to the group regarding any other items of concern for potential consideration this year.

- *Criminal History Record Information Act (CHRIA) and the Judicial Branch*

Ms. Meyer raised a possible topic for future Advisory Committee discussion regarding the Judicial Branch's recent reversal of an October decision to make case files for dismissed cases confidential within 30 days of judgement. The prior policy had been based on an interpretation of the Criminal History Record Information Act (CHRIA) and an administrative order, which the media challenged. There may be a need to clarify some statutory ambiguity. Ms. Meyer suggested that this discussion should not happen without Ms. Lynch from the Court System being present. Sen. Burns moved to include this item in the next agenda and it was agreed by unanimous consent.

- *Social Security Numbers in medical files held by the Dept. of Health and Human Services*

Ms. Morgan asked if former Rep. Bradley Moulton could address the group about a concern he had based on his dealings with the Department of Health and Human Services in his capacity as a private attorney; Sen. Burns welcomed Rep. Moulton to the microphone.

Rep. Moulton explained that those who bring complaints before the medical boards make their records public information. His client had to file FOAA requests with the Department of Health and Human Services to access her medical review records. His and his client's chief concern was that these records included his client's social security number, and that this sensitive information was being treated as a public record. The Advisory Committee took no action on this topic.

- *Warden's Service FOAA requests*

Rep. Monaghan asked to discuss the issue of the Warden's Service FOAA requests about which the Advisory Committee had been asked to hold a public meeting. Sen. Burns gave the Advisory Committee an update, stating that he, Rep. Monaghan, the Presiding Officers of the Legislature and a representative of the Attorney General's Office were to have a meeting later that day to discuss the best way to proceed. Mr. Higgins moved to include an agenda item for the next meeting to discuss the outcome of this meeting; it was agreed by unanimous consent.

Discussion of Subcommittees

The Advisory Committee agreed that there would be one Subcommittee--Public Records Exceptions Review Subcommittee. Sen. Burns, Rep. Monaghan, Ms. Pistner, Ms. Lynch will continue to serve as members with the addition of Mr. Stout and Mr. Parr this year.

Summary of July 20, 2016 meeting

Hazardous material transported by railroads

Staff reviewed the request from the Legislature's Judiciary Committee to examine the public records exception to Maine's Freedom of Access Act (FOAA) recently enacted in LD 484 (Public Law 2015, chapter 161), relating to hazardous material transported by railroads. Staff reviewed the packet of documents provided to the Advisory Committee, including the statutory criteria for review of public records exceptions and information supplied by the Department of Environmental Protection regarding this public records exception in response to a survey questionnaire sent by staff.

Mr. Parr noted that the intent of the exception seems aimed at preventing acts of terrorism, but that there are already a number of other FOAA exceptions for sensitive information related to potential terrorist attacks. For example, 1 MRSA §402(3)(L) is an exception for records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, and Title 16 would seem to provide alternate means of protecting this kind of information as well. Mr. Parr asked staff if these exceptions were taken into account in the Judiciary Committee's deliberations on this exception. Staff replied that the Committee was aware of the existing security plan exception. This new exception may go beyond that. Railroad companies were concerned that this preexisting security plan exception was not adequate to protect the records they were concerned with. It was noted that the Judiciary Committee never received any testimony on the bill with concerns about these records not being public.

Rep. Monaghan, who is also a member of the Judiciary Committee, did not recall if a side-by-side comparison of similar state laws had been provided during the Judiciary Committee's consideration of the bill. Staff replied that the only comparable state law provided to that committee was a Massachusetts law that was broad enough to cover hazardous material shipped by rail; this law is not specific to railroads, unlike the Maine law.

The Advisory Committee discussed whether the Judiciary Committee had reviewed the bill against the criteria in 1 MRSA §432(2) as the Judiciary Committee typically does, and whether there has been any change in circumstances relative to the criteria for this exception since that Committee's original review. Although members of the Judiciary Committee believed they had reviewed the proposed exception in light of the statutory criteria, the review had not been documented with a review checklist. Staff and Advisory Committee members noted that there does not appear to have been any changes in circumstances, for example in federal law, since the bill was passed, except for increased public interest likely generated by media reports.

Mr. Pringle noted that the current language of the exception is broad and causes the Department of Environmental Protection (DEP) to wonder to what extent the exception applies to their records. He also remarked that it seemed odd that Maine citizens should know nothing about hazardous material transported across the state and expressed concern with the sheer number of materials covered by this broad exception – the “hazardous material” definition comprises approximately 200 pages in federal regulations – and suggested that at least some of these materials probably don't need to be kept confidential.

The Advisory Committee discussed the issue of the broad “hazardous material” definition, and the best way to determine how to narrow it, if at all. There was doubt expressed about whether this may be an issue any more, since the DEP has recently resumed releasing summaries of rail shipments of crude oil, albeit after the date of shipment.

Ms. Pistner noted that there are several issues involved with this topic: how to address the public concern that has arisen since the bill's enactment; whether the problem is fixed now that the DEP is providing a summary list of railroad crude oil shipments; whether the scope of hazardous materials should be narrowed in the exception; and finally, if the summary DEP is currently releasing should be required by statute.

In response to the Advisory Committee's discussion, staff noted that related issues that may need to be resolved are whether the public have access to this information, whether there is a need to make more information public than DEP is currently releasing in its post-shipment summaries, and whether DEP has concerns with the current statutory language.

Mr. Parr introduced the idea of sending a letter to the Judiciary Committee recommending that it revisit this topic, potentially narrowing the scope of the exception and providing the public another opportunity to comment on the provision. Sen. Burns added that the letter should request that the Committee create a committee bill as a vehicle for this reconsideration.

Peggy Reinsch, nonpartisan staff for the Judiciary Committee and former staff for the Advisory Committee, addressed the committee at the chair's invitation. She offered that it would be helpful for the Judiciary Committee if the Advisory Committee's letter outlined exactly what the questions or issues are.

The Advisory Committee decided to go through the checklist of public records exception review criteria (1 MRSA §432(2)) to better focus its request to the Judiciary Committee. The group highlighted the areas of greatest concern, including: paragraph G – whether public disclosure

jeopardizes the public and if so, whether that safety interest substantially outweighs the public interest in the disclosure of the records; paragraph H – whether the proposed exception is as narrowly tailored as possible; and paragraph E – whether the public disclosure puts a business at a competitive disadvantage and, if so, whether that interest substantially outweighs the public interest in the disclosure of records.

Advisory Committee members also voiced concern about whether the information should only be made available retrospectively, or whether the public should have a right to the information prospectively.

On Mr. Parr's motion, and Ms. Goucher's second, the group unanimously approved sending a letter to the Judiciary Committee on this issue. Staff agreed to draft the letter, outlining the issues raised by the Advisory Committee, for review at the next meeting.

Personal contact information for professions and occupations licensed by the State

Staff reviewed the background documents provided to the Advisory Committee, including the recently enacted bill providing a public records exception for the addresses and telephone numbers of licensees and license applicants in the possession of the State Board of Social Worker Licensure. Staff also reviewed a list of occupations and professions licensed in Maine. Staff informed the group that in terms of licensing information, generally the protected information is an individual's Social Security Number, unless a specific law is enacted to protect particular information for a particular licensing category.

Mr. Pringle mentioned the example of nurses, physicians and osteopaths, where there is a separation of personal private information on licensees from the public information, and wondered how well this has worked in practice. Staff replied they would need to reach out for further information, but shared a letter submitted by Planned Parenthood to the Advisory Committee stating that information about licensees that is supposed to be private was released to the public in response to at least one FOAA request.

The Chair invited Nicole Clegg, Vice President of Public Policy for Planned Parenthood of Northern New England, to comment. Ms. Clegg related her organization's experience with FOAA requests to the State Board of Nursing. Ms. Clegg stated that although the Board's redaction of non-public, personal information has gotten better, there is still a significant amount of information released, including photographs of licensed nurses, in response to anonymous email requests for public records. The release of this information in this manner is distressing to employees of Planned Parenthood.

Mr. Parr noted that the Advisory Committee has previously discussed whether anonymous FOAA requests should be permitted. He noted that the purpose of FOAA is to provide the public information about what the government does. He asked Ms. Clegg whether she saw any value in sharing this amount of information to the public under FOAA. Ms. Clegg replied that she struggled to find a reason that the public should have a right to know this amount of information about a private citizen.

Ms. Pistner noted the tension between the safety and privacy of licensees with the public need to know who is actually licensed, and asked Ms. Clegg to clarify the scope of her request for increased privacy. Ms. Clegg acknowledged the public interest, but iterated that she didn't see the need for the public to have access to the entire license application file – the wealth of information available to the public is significant, even if the applicant's address is redacted.

Ms. Meyer mentioned recent legislation limiting the scope of the Maine Human Rights Commission's investigation records that would be subject to FOAA requests, noting that the compromise struck by this exception could be a useful model. Sen. Burns noted it would be helpful to have more information on this, to inform the group's efforts in finding the balance between public and private information.

Mr. LaHaye questioned the propriety of anonymous FOAA requests. Mr. Parr weighed in, noting his belief that when citizens are required to provide private personal information to government, the government has a duty to safeguard that information, except when release of the information furthers the underlying purpose of FOAA. Mr. Parr offered that an opt-in or opt-out system might be one model to look at in trying to strike the appropriate balance.

Mr. Stout shared his familiarity with the federal Privacy Act, which acts to counterbalance the federal Freedom of Information Act. Under the federal system, personally identifiable information (PII) is only permitted to be collected and used for certain purposes, and is not permitted to be publicly disclosed.

Ms. Clegg of Planned Parenthood noted that the Maine Gambling Control Board protections for PII are a good example. Mr. Pringle suggested using as a template the exceptions we already have, for example the protections around public employee personal information, and looking at what information the public really should know about a person licensed by the State.

Anne Head, Commissioner of the Department of Professional and Financial Regulation, was invited to address the group. Commissioner Head acknowledged that the Advisory Committee was faced with an interesting and tough decision involving personal privacy interests and public oversight of agency actions. She reminded the Advisory Committee that licensees put their information on record with agencies in order to receive permission from the State to do certain things. However, she also recognized that while there is a need for public oversight over government decision making, there may be legitimate personal safety and privacy interests that can be served through some middle ground. She then encouraged the Committee to consider what they are trying to achieve with this potential change. Mr. Parr asked if the group could focus its work on protecting certain classes of personal information. Comm. Head answered in the affirmative and noted that there may be more information collected by boards and agencies than is necessary for licensing purposes: agencies have a responsibility not to over-collect.

Staff agreed to put together templates of examples of personal information that is currently protected.

Ms. Pistner noted that the public needs access to licensing information to make sure the Board acting appropriately. For example, access to this information allows the public to know the basis

for the grant or denial of a license application. However, access to this information can also be abused, she noted.

Sen. Burns remarked that this was a balancing act, but the bottom line should be protecting people's safety. Just because one seeks a professional license does not mean the person needs to put his or her life in danger. He also voiced support for developing a uniform policy for the treatment of licensing information.

Mr. Parr made a motion, seconded by Mr. LaHaye, that the group look at existing examples of policies and law that focus on personal contact information to develop a uniform policy regarding personal information in licensing records.

Rep. Monaghan stated that before individuals provide their information for licensure, there should be a disclosure from the agency as to what portion of that information will be public and what will be kept private.

Ms. Meyer noted that the Planned Parenthood letter was disturbing, but the flip side is that making PII available to the public can protect the public in ways that are more beneficial than protecting a particular licensee. For example, having access to a plumber's home address can allow members of the public to determine if he or she is a registered sex offender. Mr. Shorey stated his view that too much licensing information is publicly available, that the availability of that information can cause harm, and that it is time the group tried to do something to protect some of that information, even if the proposed solution isn't right the first time. Ms. Goucher opined that with modern technology, and Google searches, the public already has access to an incredible amount of personal information – keeping government records confidential is only putting a finger in the dike. Sen. Burns agreed that private information was readily available with modern technology, but stated that people place a lot of trust in government and expect a certain level of prudence and accountability.

The group agreed to place this item on the next meeting agenda. The Committee asked Planned Parenthood to reach out to its national organization for additional policy guidance. Advisory Committee staff agreed to search for examples from other states of protections for personal information in licensing records. The committee voted unanimously in favor of this course of action.

Maine Warden Service FOIA requests; Advisory Committee request to Colin Woodard and Sigmund Schutz for input and suggestions for changes in policy or law

Staff reviewed correspondence provided to the Advisory Committee regarding the ongoing dispute between the Portland Press Herald/Maine Sunday Telegram and the Maine Warden Service over the agency's response to the paper's FOIA requests. This included a letter dated June 24th from Sen. Burns and Rep. Monaghan to Colin Woodard of the Portland Press Herald and the paper's attorney, Sigmund Schutz. The letter stated that despite recent requests for a public hearing regarding the issues between the paper and the agency, the Advisory Committee was not a fact-finder or arbitrator of disputes and was better suited to discussing and considering policy solutions to problems concerning access to public records. Accordingly, the letter invited

input or suggestions for changes in policy or law based on the paper's recent experiences with the Maine Warden Service.

The Advisory Committee was copied on a July 1st letter from Mr. Schutz to the Warden Service and the Attorney General's Office summarizing the paper's dissatisfaction with the agency response as being untimely and incomplete, as well as conditioned on an unreasonable fee.

The Warden Service responded to Mr. Schutz's letter on July 15, and copied Advisory Committee staff. This letter disputes the characterization of the agency's response.

On July 18th, Mr. Schutz responded to the Sen. Burns and Rep. Monaghan request letter on behalf of the paper, declining to offer suggestions for changes in the law because the paper does not engage in legislative advocacy. The letter noted that if the Advisory Committee focuses only on changes in the law, it may overlook related issues of compliance with and enforcement of current law.

Sen. Burns recapped the meeting that he, Rep. Monaghan, the Presiding Officers of the Legislature and the Office of the Attorney General had after the last Advisory Committee's meeting, at which it was decided that Sen Burns and Rep. Monaghan would send the June 24th letter.

Rep. Monaghan suggested that the Advisory Committee should have a discussion about State agencies' compliance with FOAA to prevent similar disputes from arising again. Sen. Burns disagreed, noting that the law enables aggrieved parties to use the Superior Court to force compliance. Ms. Pistner pointed to the "10 Factors for Estimating Time" document Eric Stout had put together as a helpful development for understanding agencies' response time. Also, she pointed to upcoming training for agencies presented by Brenda Kielty, the Public Access Ombudsman.

Ms. Kielty was invited to address the group. She discussed an upcoming training she is providing for all Executive Branch agency public access officers. This will be the first time all agency public access officers will receive training at the same time. The format will be a round table discussion, focused on two topics: 1) providing a cost estimate for FOAA responses, and 2) conducting searches. Regarding the cost estimate, she noted that it is not an easy determination. She worked with Mr. Stout to develop standards to apply to the estimate process, and finds the rubric developed by Mr. Stout as a helpful way for agencies to approach the estimate process. Regarding the search topic, Ms. Kielty noted that FOAA doesn't tell an agency how to search for documents and there is currently no common methodology for searching electronic records, specifically emails. After the training, Ms. Kielty plans to continue dialogue with the public access officers. Ms. Kielty agreed to attend the next meeting and present a preliminary Public Access Ombudsman report as well as an update after the public access officer training.

Ms. Meyer raised the idea of the Advisory Committee having a public hearing, not to delve into the specifics of any dispute, but to look at the bigger picture of how FOAA is working for the public. She noted that the Advisory Committee has been around for 10 years and has not held a public hearing yet. The Advisory Committee discussed this notion of a public hearing, and how

it might work. Members raised questions about what the Advisory Committee would seek to do with the information gained from the public hearing, how the meeting would be run in order to elicit the most useful testimony and concerns that the viewpoint of agencies may not be fairly represented. Ms. Kielty weighed in that the idea of the public providing input on FOAA in the larger sense is very timely. FOAA is a dynamic statute and this would be a valuable opportunity to hear how it is working. Ms. Kielty also offered the idea of a summit format, where specific parties would be invited to provide input to help the focus be more clearly on ways to improve the law and less on the details of individual cases. The Advisory Committee favored providing broader public input.

Sen. Burns offered that before the next meeting the chairs would seek input from the Attorney General's Office and the Director of the Office of Program Evaluation and Government Accountability, Beth Ashcroft, for additional ideas about organizing the public hearing. Discussion on a potential public hearing will be added to the next meeting's agenda. This discussion will be held after the feedback from Ms. Kielty on the results and agency perspectives from her public access officer training.

Review subcommittee recommendations relating to existing public records exceptions enacted from 2005- 2012, pursuant to 1 MRSA §433

Staff presented the recommendations of the Public Records Exceptions Review Subcommittee from its December 2015 meeting. The Advisory Committee tentatively agreed to support the recommendations of the Subcommittee, but reserved the opportunity to raise any questions or concerns at the next meeting.

Potential topic for future discussion: Consider legislation requiring local boards and committees to record their executive sessions and to preserve these records so that they may be legally discoverable if there is a later dispute about either the content or propriety of the discussion held during these sessions

Mr. Pringle expressed doubt about taking up this topic given the amount of business already before the Advisory Committee and because this is an issue that largely arises in the municipal context but there is no municipal interest representative yet appointed to the Advisory Committee to provide that municipal perspective. The municipal interest member should be seated before the Advisory Committee takes up this issue. Mr. Pringle suggested checking on the status of this appointment.

Ms. Pistner pointed out that besides checking on the status of the municipal member of the Advisory Committee, the group should be sure to give adequate public notice to municipal interests so that they may attend and provide feedback.

The Advisory Committee decided that this topic would be tabled until the next meeting, at which staff will present information on the statutory requirements around meeting minutes and executive sessions. Sen. Burns will formally encourage the appointment of the municipal member of the Advisory Committee.

Review of 10 factors for estimating time to respond to a request under the Freedom of Access Act suggested by Eric Stout

Mr. Stout gave a brief presentation to the group on his document, "Freedom of Access Act (FOAA) Email Searches: 10 Factors for Estimating Time."

Mr. Stout began with a FOAA request metaphor: When one goes to the mechanic to get an estimate for repairs to a broken automobile, it is difficult for the mechanic without first lifting up the hood and taking a look at the engine.

Mr. Stout relayed his experience assisting agencies with searches, noting that requestors usually believe the search is going to be easier and cheaper than it ends up being. He also noted the amount of difficulty for agencies to put together a good faith estimate, owed largely to the agencies not knowing from the beginning what the volume of search results will be. At the current time, it is necessary to search each individual State employee's email account. In the future, the current email system may be replaced with an email system that has an "immutable archive" that can be searched centrally. A computer is fast, but a computer can't tell whether search results returned are really relevant to a FOAA requestor's request – this takes staff time to search through the initially returned records. Mr. Stout emphasized the importance of establishing a relationship of trust between the agency and the requestor and maintaining a conversation between the parties to be sure that the agency is spending its time producing the records the requestor is truly seeking.

Maine Center for Disease Control and Prevention

Although not on the agenda, Ms. Meyer raised an issue about a recent Maine Center for Disease Control and Prevention rulemaking that would create new public records exceptions from FOAA, rendering information about disease outbreaks not public records unless they affected more than 2,000 people. She wondered how this could be accomplished in rulemaking. Staff agreed to look further into the issue for the group.

Anonymous FOAA requests

A topic that briefly arose earlier in the meeting was revisited by Mr. Parr, who inquired whether there was any interest by the Advisory Committee in taking up the topic at its next meeting. This would include a discussion of the extent to which, if at all, an agency can ask for the purpose of a FOAA requestor's request. Staff will provide more information on this topic, and will provide documents by email prior to the group's next meeting.

Summary of August 17, 2016 meeting

Hazardous material transported by railroads

Staff discussed a draft letter from the Advisory Committee to the Legislature's Judiciary Committee, in response to the Judiciary Committee's request for the committee to review the public records exception at 1 MRSA §402, sub-§3, ¶U. The Advisory Committee's letter

recommends that the Judiciary Committee consider submitting a committee bill to the Legislature so that the current exception may be fully vetted by the Legislature in a manner that allows the most meaningful participation from stakeholders and other members of the public, and from state and local government entities. The letter iterates the Advisory Committee's interpretation of the current law, that it is not intended to prevent public access to summary or aggregate information about the transportation of hazardous materials by rail in the State, particularly crude oil, or to prohibit disclosure of information about spills or accidental discharge of hazardous materials.

The Advisory Committee laid out a number of questions and concerns that may help guide the Judiciary Committee's formation of a committee bill, including whether disclosure of the information sufficiently jeopardizes public safety to outweigh the public interest in disclosure, whether disclosure disadvantages a business interest sufficiently to outweigh the public interest in disclosure and whether the language of the current exception is as narrowly tailored as possible.

After the summary, Mr. Pringle made a motion, seconded by Mr. Parr, to send the letter as written to the Judiciary Committee. Mr. Stout pointed out that the federal regulations cited in this public records exception for the definition of "hazardous materials" do not point directly to the 150-plus pages of materials in 49 Code of Federal Regulations § 172.101, which should be clarified. He also wanted mention of the extensive record keeping and retention requirements in Part 172 of the federal regulations. The motion was amended to include Mr. Stout's suggested change and was voted unanimously.

Personal contact information for professions and occupations licensed by the State

Staff summarized their research into examples of models that could guide the formation of policy recommendations for a more consistent approach to adding protections for the personal information of professional and occupation licensees and license applicants. Research was condensed into a chart distributed to the Advisory Committee, and Staff reviewed this document outlining examples of policy options. The examples drew from various public records exceptions from Maine law, e.g., those protecting the residential address and telephone numbers of emergency medical services, nursing, osteopathic and medicine licensees and applicants when professional contact information has been provided. Examples from other states were also included in the document, including personal information protections for licensees in California, Indiana, Missouri and North Dakota.

Staff provided information on LD 1171 from the 127th Legislature. At the last meeting, a member had pointed to the amended version of this bill as providing an example of a reasonable compromise between privacy interests of individuals and the public interest of the public. This bill dealt with the confidentiality of the investigative records of the Maine Human Rights Commission, and the majority amendment of the Judiciary Committee would have designated certain information confidential, including medical records, the identity of a minor, personnel records, personal telephone numbers and home addresses.

The Advisory Committee invited up Nicole Clegg, Vice President of Public Policy for Planned Parenthood of Northern New England. Ms. Clegg, who had been asked by the Committee for more information at its prior meeting, distributed a number of handouts: a memo from Planned Parenthood, a report from the National Abortion Federation on violence and disruption against abortion providers, a statement filed in Superior Court in the State of Washington by the National Director for Affiliate Security at Planned Parenthood Federation of America outlining the history of violence and harassment against abortion providers and abortion-providing facilities, and a copy of Maryland law (MD Code, General Provisions, §4-333) making all licensing records confidential except for certain specified categories of information.

Ms. Clegg reiterated that the only non-public information in Maine licensing records is an individual's Social Security Number. She pointed out that even a licensee's federal Drug Enforcement Administration (DEA) drug authorization card is released pursuant to public records request, creating a security risk in itself. She noted that sometimes home addresses are redacted.

Mr. Pringle expressed his view that it would be better to say what isn't public than to specify what is public. Otherwise, he noted, the Advisory Committee would have to look through entire licensing files deciding what was useful to the public and what should be confidential. He stated his belief that home address, home phone and fax numbers and personal cellphone numbers should be confidential. He opined that 1 MRSA §402(3)(O) should be used as a starting place for designating what should be designated confidential in licensing records. Mr. Parr suggested an opt-in type of system, where certain licensing information would be confidential unless the subject of the records affirmatively allowed public disclosure.

Ms. Pistner voiced concern that increased agency costs to redact new categories of information in licensing records would create a fiscal note, likely dooming any bill seeking this increased confidentiality. To reduce agency time and costs, Ms. Pistner suggested perhaps developing a certain document containing information most valuable to the public that did not include private information, and then making that document a public record while the rest of the licensing files would be confidential. Mr. Parr reminded the Committee that there were other categories of licenses regulated by other departments, including 3 by the Department of Public Safety.

Ms. Clegg from Planned Parenthood asked the Advisory Committee to consider a notification system that would notify licensees if their file was requested by a member of the public.

Ms. Meyer, Rep. Monaghan and other Committee members noted that the Committee should keep in mind that there are many categories of licenses other than those commonly subject to harassment as illustrated by Planned Parenthood, expressing hesitancy at applying the same level of confidentiality to all license categories. Mr. Higgins, Ms. Meyer and Ms. Morgan variously expressed the idea that in general, the more the public knows about licensees the better, except in certain circumstances of concern, and that it was important that the public be able to verify the address of a licensee. Several members voiced support for the earlier idea of a form that would be public that contained certain licensee contact information as a solution to the potential harassment issues facing certain licensees.

Mr. Parr asked staff to review what the original request from the Judiciary Committee was on this topic. Staff replied that the Advisory Committee had been asked to develop guidance to assist the Judiciary Committee when it considered proposed confidentiality provisions for licensing information. Sen. Burns stated that the clearer the guidelines, the better, and that the Advisory Committee should err on the side of transparency.

Ms. Clegg from Planned Parenthood suggested that photographs and DEA authorization cards be kept confidential. She noted that DEA cards contain the licensee's name, address, drugs that can be prescribed, date of card issue, expiration date and DEA number.

Ms. Lynch expressed interest in communicating to other license categories to see if there were other concerns with DEA authorization information being released as public records.

Mr. Parr made a motion, seconded by Mr. Pringle, that the Advisory Committee send a letter to the Judiciary Committee with guidance for considering proposed confidentiality provisions applicable to licensing records. The letter would support the general principle that personal contact information should not be public, similar to the criteria at 1 MRSA §402(3)(O) for protecting public employee personal information, except for cases in which the licensee or license applicant has only provided a personal address and not a public business address. Licensees and license applicants must either be presented with an opt-in approach to personal contact information disclosure, or else the regulating body should have a form that would be public but would exclude non-public private information about the individual.

The Committee voted in favor of the motion, 11-2.

Public Access Ombudsman update & recap of Public Access Officer training

Brenda Kielty, Public Access Ombudsman, addressed the Advisory Committee, beginning with a summary of the preliminary report distributed to members. Ms. Kielty noted that the upward trend for number of contacts from the public since 2013 has continued. Of the contacts, most are inquiries about Maine's Freedom of Access Act (FOAA) as opposed to complaints. When she receives suggestions for FOAA improvements, which happens seldom, she said that she refers these suggestions on to the Advisory Committee. Most contacts, she noted, are from private citizens as opposed to government officials.

Ms. Kielty suggested that issues of perceived delay in FOAA response time by public bodies is often due to the expectations of the public requestors not aligning with reality. Executive sessions seem to create the most FOAA inquiries and complaints. Another popular topic is what constitutes a public meeting, especially in the context of remote participation.

Mr. LaHaye asked if Ms. Kielty contacts an agency when a member of the public complains about the agency. She replied that her goal is conflict resolution, and her intervention all depends on the particular case. She may encourage the requestor to work with the agency, as her intervention may sometimes escalate a conflict.

Ms. Kielty next discussed the recent Public Access Officer training she had given. The focus of the training was on the process of searching for records. She noted that this is an area in which FOAA is silent, and that searches for electronic records are much different than searches for paper record. The procedure begins with proper record retention, actually searching the records, assembling the records, reviewing the records and finally providing access to the requestor. Ms. Kielty noted that Advisory Committee member Mr. Stout provided assistance with the email search portion of the training, which will be offered to each State agency as a follow-on to the initial group meeting.

Ms. Meyer asked if this information was also being provided to the Maine Municipal Association and the Maine School Management Association, and Ms. Kielty replied that she does do outreach to those organizations and will continue to do so. The information from the training will need to be customized somewhat to better address the needs of the other public bodies which these organizations represent.

Sen. Burns asked about records retention training, to which Ms. Kielty replied that the Maine State Archives provides such training. She acknowledged that more can be done in the area of records retention, and must be done.

Right to Know Advisory Committee public hearing

Staff distributed and reviewed the draft public hearing notice for the potential upcoming Advisory Committee public hearing about how FOAA is working and how it might be improved. Staff pointed out that the notice specifically states that the hearing is not a forum for the resolution of specific complaints about meetings or records.

Mr. Higgins wondered if the Advisory Committee or specific members had received any requests from the public to hold a public hearing. Several members noted that they had. Ms. Lynch noted that government officials are feeling some FOAA requests are burdensome and she expect to hear from these officials who bear the burden of responding to FOAA requests as well as from members of the general public.

Ms. Lynch suggested that staff be ready to take up the Advisory Committee's normal business in case there is little testimony provided at the public hearing.

Mr. LaHaye made a motion, seconded by Ms. Lynch, that the public hearing be held, set for September 14th. Sen. Burns added that the public hearing should take place at 1:00 p.m. while the subcommittee could meet at 10:00 a.m. The vote was unanimous.

Subcommittee recommendations relating to review of existing public records exceptions enacted from 2005- 2012, pursuant to 1 MRSA §433

Staff presented the recommendations of the Public Records Exceptions Review Subcommittee, including recommendations from its December 2015 meeting and its July 20th meeting. The Committee approved of the Subcommittee's recommendations in all instances, except for the following.

With respect to the public records exception at 1 MRSA §402(3)(R) (Advisory Committee reference number 7), relating to Social Security numbers in possession of the Secretary of State, the Advisory Committee moved to set aside the item until further information could be gathered from the Secretary of State's Office by staff regarding why this public records exception was needed given that paragraph N of the same statute already exempts all Social Security Numbers from the definition of public records under FOAA.

Regarding 22 MRSA §1711-C(20) (Advisory Committee reference number 50), relating to the names and other identifying information of individuals in a state-designated statewide health information exchange, the Advisory Committee hesitated to take the recommendation of the subcommittee to repeal the provision. Staff provided an explanation of Maine's statewide health information exchange, which serves as a hub for connecting healthcare providers with electronic patient medical records from participating healthcare providers. HealthInfoNet is the state-designated organization managing this exchange. Staff relayed that through contacts with this organization they had expressed the belief that this public records exception had no effect because they were not a public body that falls within the requirements of FOAA. Additionally, HealthInfoNet communicated that it had never received a request for information from the public and saw no value in maintaining this public records exception. Staff offered that according to the criteria currently used by the Maine Supreme Court to determine whether an organization is a public body subject to FOAA, HealthInfoNet would very likely not be considered subject to FOAA. This organization is a private non-profit company established independently from any State action, the organization does not receive State funding and the State have any involvement or control over the exchange besides imposing certain security and confidentiality provisions. Staff offered that HealthInfoNet as a health information exchange is covered by two federal confidentiality laws, the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act.

Mr. Pringle expressed his concern about repealing this provision, citing the law of unintended consequences. Other members echoed this concern over unintended consequences and being uncomfortable with repealing the provision unless it was certain that this information could never be released under FOAA. Several members were of a contrary position, taking the view that if the public records exception was not needed then it should be eliminated. The Advisory Committee voted to table this item and staff agreed to gather further information.

With respect to the public records exception found at 29-A MRSA §1301 (Advisory Committee reference number 55), relating to the social security number of an applicant for a driver's license or non-driver identification card, this provision is similar to the other tabled item relating to Social Security Numbers in the possession of the Secretary of State. The Advisory Committee voted to also table this item in order for staff to get further information from the Secretary of State's Office.

Proposal to require local boards and committees to record and retain the recordings of executive sessions

Staff reviewed current Maine law regarding open meetings and executive sessions, 1 MRSA §§403, 405, 407. Staff pointed out additionally that the Maine Supreme Court has held that when the propriety of an executive session is challenged, the burden is on the public body to establish that the executive session was proper.

The Advisory Committee invited Rep. Hubbell to explain his proposal. Rep. Hubbell's described his proposal, which is to require local boards and committees to record executive sessions and preserve those records so that they may be legally discoverable in case of a dispute about the content or propriety of the discussion held during these executive sessions. Rep. Hubbell then suggested the Advisory Committee hear from his constituent, Robert Garland, former Town Councilor for Bar Harbor, who had brought the issue to his attention. The Advisory Committee then invited up Mr. Garland, who explained his experience with executive sessions and a personnel matter in Bar Harbor. During litigation involving the matter, Mr. Garland noted that what had transpired during the executive sessions was recalled much differently than how he had remembered it.

Mr. Higgins asked if an attorney can be present during an executive session and whether they can request that a transcript be made. Mr. Pringle addressed the question, stating that an individual who is the subject of an executive session has the right to request to be present, have their attorney present and can request that the meeting be public. This also includes the right to have a court reporter be present to take a transcript of the proceeding, he said. Mr. Higgins asked if the transcript would then be considered a public record, to which Mr. Pringle replied that it would not be, as it would be in the possession of that person and their attorney, though it could always be released at the prerogative of that individual.

Mr. Pringle acknowledged the concern prompting the proposal, but stated that he would be extremely reluctant to have executive sessions recorded. He stated that in his view, coming from his experience in the school board context, the administrative burden of recording and indefinitely keeping these recordings and ensuring their confidentiality into perpetuity outweighed the potential for abuse of executive sessions. He reiterated that the courts place the burden on the agency or public body holding an executive session to justify the propriety of that executive session if there is a legal challenge. A judge would make the determination regarding truthfulness and reliability of participants' recollections.

The Advisory Committee invited up a representative from the Maine Municipal Association, Garrett Corbin, to provide a municipal perspective on the issue. Mr. Corbin posited that it is important to balance the law so that the public interest does not outweigh privacy interests. This proposal, he noted, would discriminate against municipalities and local government in a way that is not done elsewhere in FOAA. He referred to the portion of the executive session statute that details what constitutes proper subject matter for an executive session, 1 MRSA §405(6-A)(1), noting that an executive session is only held if an individual's right to privacy or potential damage to reputation is involved. Mr. Corbin stated that making and keeping records of these executive sessions increases the likelihood of inadvertent disclosure of this sensitive information. He added that the law as it currently stands provides a remedy through the court system.

Ms. Lynch noted that executive sessions involve much more than just personnel matters, which seems to be the focus of the discussion. She asked Mr. Corbin whether, in these other contexts, were executive sessions to be recorded and legally discoverable, would that chill the candor of these municipal discussions? Mr. Corbin agreed that it would, relating feedback from some municipal representatives that had told him they would not hold executive sessions if this proposal went through.

After a bit more discussion, Mr. Higgins made a motion, seconded by Mr. Pringle, that the Advisory Committee not move forward to recommend any changes to the current law around executive sessions. The vote was unanimous.

The Criminal History Record Information Act (CHRIA) and the Judicial Branch

The Advisory Committee opened up discussion on a topic raised at earlier meetings, regarding the Criminal History Record Information Act (CHRIA) and the Judicial Branch's recent reversal of its policy of making confidential case files for dismissed cases. Ms. Meyer stated that she was satisfied with the Judiciary's current policy. There was no interest by members in having any further discussion.

Anonymous FOAA requests

In response to the Advisory Committee's request at its prior meeting for more information on the extent to which, if any, an agency may ask for the purpose of a FOAA requestor's request, staff began by reviewing current Maine law. Staff related that 1 MRSA §408-A provides the general principle that "a person has the right to inspect and copy any public record", and subsection 3 of that section provides that an agency or official "may request clarification concerning which public record or public records are being requested." Staff continued that an individual may be required to clarify their public records request by an agency, and that while nothing in FOAA prohibits an agency or public body from asking additional questions to a requestor, the requestor is not obligated to provide any other information to the agency and the agency may not discriminate in its response to the request regardless. Staff then directed the Advisory Committee to a handout with a comparison of other states' public records laws in regard to how they handle requestor identity and purpose.

Mr. Stout noted that often in the context of email requests, a requestor is anonymous by sheer virtue of their obscure email address and not by any intention of anonymity by the requestor. Mr. Pringle offered his opinion that a requestor should not be required to give their name or purpose when making a request for public records. Sen. Burns wondered if members thought a change should be made to FOAA to prohibit agencies from asking a requestor's name or purpose, with several members disagreeing that this was needed. Mr. LaHaye posed to the group whether there should be a distinction between commercial and non-commercial purposes of requestors. Mr. Higgins shared his view that if a record is open, it should be allowed to be used for whatever purpose the requestor wants. Mr. Pringle shared that the Advisory Committee has wrestled with the commercial/non-commercial distinction in the past, and could never work out how to precisely define the difference between the two. Mr. Parr noted that as a practical matter, even if there were a distinction made, a person can have someone else request a public record for

them, in order to get around the restriction. He also wondered what the State's policy would be for what to do with requestor information if collected.

The Advisory Committee voted unanimously to take no action on this topic. Rep. Monaghan noted that if there were major concerns regarding anonymous FOAA requests, such as voiced by Planned Parenthood, then those parties could raise this with their legislators to bring legislation forward in the next legislative session.

Summary of September 14, 2016 meeting

[to be added]

Summary of October 5, 2016 meeting

[to be added]

VI. ACTIONS RELATED TO COMMITTEE RECOMMENDATIONS CONTAINED IN TENTH ANNUAL REPORT

The Right to Know Advisory Committee made two recommendations in its tenth annual report. The legislative actions taken in 2016 as a result of those recommendations are summarized below.

Recommendation:

Enact legislation authorizing the use of technology to permit remote participation in public proceedings by non-elected members of public bodies

Action:

A majority of the Judiciary Committee voted "Ought Not to Pass" on the recommendations of the Advisory Committee to authorize the use of technology to permit remote participation in public proceedings contained in LD 1586, *Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceeding*; however, a minority of the Judiciary Committee proposed an amendment that would have required a governmental entity to adopt a written policy governing remote participation by members that also describes how the policy meets the principles of FOAA. The bill and the amendment were not enacted.

The Judiciary Committee also considered another bill related to remote participation in public proceedings, LD 1241, *An Act To Increase Government Efficiency*, which was carried over from the First Regular Session to the Second Regular Session. As finally enacted, LD 1241 permits the board or commission of each of four State bonding authorities (the Maine Governmental Facilities Authority, the Maine Health and Higher Educational Facilities Authority, the Maine State Housing Authority and the Maine Municipal Bond Bank) to conduct public proceedings with

	members participating via remote access technology in certain circumstances. LD 1241 was finally enacted as Public Law 2016, chapter 449.
Recommendation: Continue without modification 24 of the existing public records exceptions enacted after 2004 and before 2013	Action: No action by the Legislature was necessary since the Advisory Committee recommended no changes to the existing public records exceptions that were reviewed.

VII. RECOMMENDATIONS

Arising from its activities and discussions in 2016, the Advisory Committee makes the following recommendations in this, its eleventh annual report.

- Encourage the Judiciary Committee to consider proposed legislation to review the current public records exception that protects as confidential records provided by a railroad company describing hazardous materials transported by rail in the State**
{decided at August 17th meeting}

At the Judiciary Committee's request, the Advisory Committee reviewed the public records exception in current law that protects as confidential records provided by a railroad company describing hazardous materials transported by the railroad company that are in the possession of a state or local emergency management agency or law enforcement agency, a fire department or other first responder. See 1 MRSA §402, sub-§3, ¶U. The Judiciary Committee's request was prompted by media articles following enactment of the exception indicating that the public's access to information about the transportation of crude oil through the State may be limited and your interest in ensuring that the public have an additional opportunity to comment and, if necessary, to recommend changes to current law.

The Advisory Committee discussed the public records exception and agreed that the exception may benefit from additional consideration. The Advisory Committee recommends that the Judiciary Committee consider submitting a committee bill to the First Regular Session of the 128th Legislature so that the current exception may be fully vetted by the Legislature in a manner that allows the most meaningful participation by stakeholders, state and local government entities and other members of the public. The Advisory Committee believes that the current exception is not intended to prevent public access to summary or aggregate information about the transportation of hazardous materials by rail in the State, particularly crude oil, or to prohibit disclosure of information about spills or discharges of hazardous materials. The Advisory Committee also expressed the concerns about the current exception as written.

See correspondence in Appendix ___.

- ❑ **Advise the Judiciary Committee about guidelines for considering proposed legislation relating to the confidentiality of personal information about professional and occupational licensees and applicants** *{final decision pending review of draft letter at September 14th meeting}*

{discussion to be added following September 14th meeting}

- ❑ **Continue without modification certain existing public records exceptions enacted after 2004 and before 2013** *{only reflects Subcommittee recommendations adopted at August 17th meeting; additional recommendations to be added if further recommendations are adopted}*

The Advisory Committee recommends that the following exceptions enacted after 2004 and before 2013 be continued without modification.

- ◆ Title 1, section 402, subsection 3, paragraph O, relating to personal contact information concerning public employees other than elected officials;
- ◆ Title 1, section 1013, subsection 2, relating to the identity of a requestor of Commission on Governmental Ethics and Election Practices opinions;
- ◆ Title 1, section 1013, subsection 3-A, relating to complaint alleging a violation of legislative ethics;
- ◆ Title 1, section 1013, subsection 4, relating to Commission on Governmental Ethics and Election Practices records other than complaints;
- ◆ Title 12, section 8005, subsection 1, relating to social security number, addresses, phone numbers, email addresses of forest landowners owning less than 1,000 acres;
- ◆ Title 12, section 8005, subsection 2, relating to social security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs;
- ◆ Title 12, section 8005, subsection 4, relating to forest management information designated confidential by agency furnishing information;
- ◆ Title 12, section 10110, relating to a person's email address submitted as part of the application process for a hunting or fishing license;
- ◆ Title 12, section 12551-A, subsection 10, relating to smelt dealers reports, including name, location, gear and catch;
- ◆ Title 14, section 6321-A, subsection 4, relating to the financial information disclosed in the course of mediation under the foreclosure mediation program;

- ◆ Title 17-A, section 1176, subsection 1, relating to information that pertains to current address or location of crime victims;
- ◆ Title 17-A, section 1176, subsection 5, relating to request by crime victim for notice of release of defendant;
- ◆ Title 21-A, section 196-A, relating to information contained electronically in the central voter registration system;
- ◆ Title 21-A, section 1003, subsection 3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices;
- ◆ Title 21-A, section 1125, subsection 3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet;
- ◆ Title 22, section 2425, subsection 8, relating to medical marijuana registry identification cards;
- ◆ Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman;
- ◆ Title 29-A, section 1301, subsection 6-A, relating to the social security number of an applicant for a drivers' license or non-driver identification card;
- ◆ Title 30-A, section 4706, subsection 1, relating to municipal housing authorities;
- ◆ Title 35-A, section 122, subsection 1-B, paragraph G, relating to information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this section or activities in preparation for such sale, lease or use in the context of energy infrastructure corridors;
- ◆ Title 36, section 6271, subsection 2, relating to an application, information submitted in support of an application and files and communications in relation to a municipal property tax deferral program for senior citizens;
- ◆ Title 38, section 580-B, subsection 11, relating to records held by the Department of Environmental Protection or its agents regarding individual auctions administered under the carbon dioxide cap-and-trade program; and
- ◆ Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans.

The Advisory Committee recommends that the following exceptions be indefinitely postponed and removed from the review process.

- ◆ Title 1, section 402, subsection 2, paragraph G, relating to committee meetings pertaining to interscholastic sports (*review not necessary because exception is not related to a public record and is not required by law*); and
- ◆ Title 21-A, section 1125, subsection 2-B, relating to records of individuals who made Clean Elections gubernatorial seed money contributions over the Internet (*provision repealed by Citizen's Initiative*)

VIII. FUTURE PLANS

In 2016, the Right to Know Advisory Committee will continue to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access and the recommendations of the Advisory Committee for existing public records exceptions enacted after 2004 and before 2013. The Advisory Committee looks forward to a full year of activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations included in this report.

DRAFT

DRAFT

APPENDIX A

Authorizing Legislation: 1 MRSA §411

DRAFT

APPENDIX B

Membership List

DRAFT

APPENDIX C

DRAFT

APPENDIX D

DRAFT

APPENDIX E

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APPENDIX F

RIGHT TO KNOW ADVISORY COMMITTEE

AGENDA

October 5, 2016

1:00 p.m.

Room 438, State House, Augusta

Convene

1. Welcome and Introductions
2. Discussion related to public hearing on Maine's Freedom of Access Act held September 14, 2016
3. Review proposed rule of the Department of Health and Human Services, Maine Center for Disease Control and Prevention: Data Release Rule, 10-144 CMR, Ch. 175
4. Review subcommittee recommendations relating to existing public records exceptions
5. Discussion regarding the recent Superior Court case, *Flanders v. State et. al.*, as it relates to (1) requiring advance payment for FOAA requests; and, (2) repeated requests for records that have lawfully been withheld by a government entity
6. Discussion regarding potential formation of a subcommittee of the Right to Know Advisory Committee in 2017 to focus on technology issues
7. Review Annual Report – preliminary draft
8. Other issues or questions

Adjourn

Notice of Agency Rulemaking Proposal

AGENCY: Department of Health and Human Services
Maine Center for Disease Control and Prevention

RULE TITLE OR SUBJECT: Data Release Rule

PROPOSED RULE NUMBER: 10-144 CMR, Ch.

CONCISE SUMMARY: This proposed rule outlines the policies of the Maine Center for Disease Control and Prevention (Maine CDC) for the release of health-related data and makes clear to all parties the conditions under which unrestricted and restricted data will be released by the Maine CDC.

STATUTORY AUTHORITY: 22 M.R.S. §§ 42 and 824

PUBLIC HEARING: 10:00 a.m., July 13, 2016 in Room 16 at Key Bank Plaza, 286 Water Street, Augusta, Maine

DEADLINE FOR COMMENTS: July 25, 2016

AGENCY CONTACT PERSON: Bridget Bagley

AGENCY NAME: Department of Health and Human Services
Maine Center for Disease Control and Prevention

ADDRESS: 286 Water Street, 11 State House Station
Augusta, Maine 04333-0011

TELEPHONE: (207) 287-8016

Please approve bottom portion of this form and
assign appropriate MFASIS number.

APPROVED FOR PAYMENT: _____ **DATE:** _____
Authorized signature for DHHS

FUND	AGENCY	ORG	APP	JOB	OBJT	AMOUNT
010	10A	2000	01			

Rulemaking Fact Sheet

(5 MRSA §8057-A)

AGENCY: Department of Health and Human Services-
Maine Center for Disease Control and Prevention

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON: Bridget Bagley, 11
State House Station, Augusta, ME 04333-0011, (207) 287-9394

CHAPTER NUMBER AND RULE TITLE: Data Release Rule, 10-144 CMR, Ch. 175

STATUTORY AUTHORITY: 22 M.R.S. §§42 and 824

DATE AND PLACE OF PUBLIC HEARING: 10:00 a.m., July 13, 2016 in Room 16 at Key Bank
Plaza, 286 Water Street, Augusta, Maine

COMMENT DEADLINE: 5:00 p.m., July 25, 2016

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE: The health-related information acquired, stored and used by the Maine Center for Disease Control and Prevention (Maine CDC) is vital to performing expected public health functions of the agency. Safeguarding against inappropriate release of directly or indirectly identifiable data is necessary to ensure a level of public trust and confidence in the agency's methods and reasoning for disclosure. The Maine CDC considers the protections of individuals' privacy and the public's health when releasing personal health information. This proposed new rule formally outlines the Maine CDC policies for the release of health-related data and makes clear to all parties the conditions under which unrestricted and restricted data will be released by the Maine CDC.

ANALYSIS AND EXPECTED OPERATION OF THE RULE: This proposed rule directs the release of health-related data released by the Maine CDC. This proposed rule is discrete from rules governing data release specifically by Data, Research and Vital Statistics and expands definitions to address privacy protections and the disclosure of personal health information that could indirectly or directly identify individuals. The definitions and descriptions of appropriate types of data sharing and methods to safeguard privacy provide clarity to Maine CDC staff in order to respond to internal and external user for restricted and unrestricted data for specified uses.

FISCAL IMPACT OF THE RULE:

Counties/Municipalities: None anticipated.

Department: None anticipated.

Small Businesses: None anticipated.

10-144 DEPARTMENT OF HEALTH AND HUMAN SERVICES**MAINE CENTER FOR DISEASE CONTROL AND PREVENTION****Chapter : DATA RELEASE RULE**

SUMMARY: This rule outlines the policies of the Maine Center for Disease Control and Prevention (Maine CDC) for the release of data, other than data released, as described in the Rules for Data, Research and Vital Statistics.

1. INTRODUCTION

Public health agencies acquire, use, disclose or store an increasing amount of health-related information about individuals, some of which is highly sensitive, in paper-based and electronic forms for legitimate public health purposes. Use of health related information for legitimate public health purposes is critically important to preserving, monitoring and improving population-based health as well as personal health of individuals. Public health agencies have a significant interest in protecting the privacy of health-related information in their possession where protecting the privacy of such information encourages individuals to participate in public health programs and objectives.

Maine CDC is not required to collect or create data in order to respond to a data request nor is Maine CDC obligated to provide the data in the form requested.

2. DEFINITIONS

Cell refers to the space formed by the intersection of a row and column in a data table. For example, a data table may include the category "race" in columns and the category "county" in rows. The resulting cells within the table describe a population by race and county. In some instances, cells provide very specific information about a limited number of people.

Data release refers to provision of data to entities outside of the program where data are collected, stored and managed. To the extent a unit of the Maine CDC is considered a covered entity within the meaning of the Health Insurance Portability and Accountability Act of 1996 (45 CFR Parts 160 and 164), the applicable standards, rules and regulations established under that statute are applicable to the particular unit of the Maine CDC.

Denominator refers to the divisor in a rate or frequency calculation. It is typically the number of persons that gave rise to the cases of interest, based on characteristics such as place, time and demographics. For example, a cumulative rate of emergency asthma events could be calculated based on a denominator that is the entire number of female residents for a specific county and year, and a numerator that is the number of females with asthma-related emergency department visits in the same county and year. Note that in some data releases, the denominator(s) used may differ from the underlying population. For instance, child lead poisoning may be reported as a percent of children age <6 among those *tested* (denominator), but the underlying population would be the *total* number of children age <6. See the definition for "underlying population."

Direct identifier refers to information that allows the identity of a person to be determined with a specified degree of certainty. This could be a single data element or several pieces of data which, when taken together, may be used to identify an individual. The following list includes the most common direct identifiers.

- Name(s) of the individual or of relatives, employers or household members of the individual;
- All elements of dates (except year) for dates directly related to an individual including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older;
- Postal/residential street address information Latitude and longitude of street address
- Geocoded coordinates of a health event depicted as points on a map
- Telephone numbers
- Fax numbers
- Electronic mail (email) address
- Social Security numbers, certificate and license numbers, student and employee ID numbers, and any other unique identifying number
- Medical record numbers
- Health plan beneficiary numbers
- Account numbers
- Vehicle identifiers and serial numbers, including license plate numbers
- Device identifiers and serial numbers
- Personal Internet Protocol (IP) addresses
- Biometric identifiers, including finger and voice prints
- Personal photographic images
- Genetic information, including family history
- Any information that the Maine CDC has actual knowledge could be used alone or in combination with other information to identify an individual who is a subject of the information

Identifiable information refers to information that can be used to discover the identity of individuals. This could be accomplished either using a **direct identifier(s)** or by indirect identification.

Indirect identification is the identification of an individual(s) using information that does not contain direct identifiers, such as name, address or specific dates, but does contain less specific characteristics that could be used in combination with other information to identify individuals. The potential for using data without direct identifiers to identify individuals increases with the amount of information given (such as specific diagnosis codes, age, sex, year, limited geographic area, etc.) and with small numerators or underlying population (ex., 1 in a population of 10 individuals). There is also risk of identification if the underlying population is small and the numerator is nearly the same size (ex., 98 out of 100 individuals). The following criteria are used to determine whether data may indirectly identify individuals:

1. Data at or greater than State-level shall not be deemed to indirectly identify an individual, regardless of numerator or underlying population size.

2. For geographic areas or organizations within the State (including schools or other named organizations), data in a cell will be deemed to indirectly identify individuals under the following conditions:
 - a. The underlying population of the cell is less than 2,000 persons and either the numerator or the difference between the numerator and the underlying population is less than 6; or
 - b. The underlying population of the cell is less than 50, regardless of the numerator.

Internal users are Maine CDC employees, including contracted workers within Maine CDC programs directed by Maine CDC staff.

External users include users of data who are not internal users.

Geocoding is the process of assigning geographic identifiers (e.g., town/region codes or geographic coordinates expressed as latitude-longitude) to data records, such as those containing street addresses.

Geographic unit or area refers to defined spacial areas such as a county, census block or town.

Numerator means the number or count of health events (cases, diagnoses, clients, discharges, admissions or visits, etc.) being considered for release for a particular population.

Organization refers to any public or private entity with an identifiable proper name operating or doing business in the State of Maine (such as a school, church, restaurant, company).

Rates refers to a measure of the frequency of a health event per population unit, with a numerator as the count of the health event and the denominator as the count of the underlying population.

Restricted Data include any and all information created or received by the Maine CDC that relates to the past, present or future physical or mental health or condition of an individual; the provision of health services to an individual; the past, present or future payment for the provision of health services to an individual; or certain environmental, environmental health or toxicological data derived from individually-owned dwellings, land or organizations; and that allows for the direct or indirect identification of that individual. It includes any other Maine CDC data specifically identified as confidential under statute or rule.

Suppression refers to the practice of withholding the release of a count or count-derived value (e.g., rate) that does not meet the numerator and/or underlying population thresholds to prevent indirect identification. For example, if the minimum reportable value, based on the underlying population size, is 6, a cell value of 3 would be suppressed, and reported as either "<6" or "1 – 5," while the rate would not be computed. This is called *Primary Suppression*. In the event there is only one cell with a value too small to disclose, and totals are presented or available, one or more "complementary" cell values will also be suppressed. This *Complementary Suppression* prevents inadvertent disclosure of the first cell through back-calculation.

Underlying population is a defined portion of the Maine population that pertains to data of interest. The underlying population may be defined by demographics (e.g., race, age, gender, etc.), as well as place characteristics, such as residing in a particular town, being a client of a particular program, a patient of a particular facility or an employee of a specific workplace. Note that in some data releases, the denominator(s) used may differ from the underlying

population. For instance, child lead poisoning may be reported as a percent of children age <6 among those tested (denominator), but the underlying population would be the total number of children age <6.

Unrestricted data is data that contain no information that could be used directly or indirectly to identify individuals. Therefore, these data will be made available for use by both internal and external users.

3. DATA RELEASE

Although Maine CDC data are vitally important for promoting and maintaining public health, inappropriate release of directly or indirectly identifiable data could result in harm both to individuals and to the Department's responsibility to perform its public health functions. Therefore, this rule sets out the various types of data sharing and appropriate methods used to safeguard confidentiality or the identification of individuals.

A. Release of Unrestricted Data

Requests for unrestricted data will be satisfied through use of existing documents, reports and publications produced by the Maine CDC. Maine CDC is not required to collect or create data in order to respond to a data request nor is Maine CDC obligated to provide the data in the form requested.

B. Release of Restricted Data

1. Internal Users

The minimum amount of restricted data should be released to adequately perform a given public health function.

2. External Users

Restricted data will not be released except as necessary to carry out the public health functions of the Maine CDC and at the sole discretion of the Department of Health and Human Services. Restricted data will only be released to external users after the Maine CDC designee(s) responsible for managing data requests has reviewed and approved the request to assure that it is released in accordance with this Rule.

3. External Users for Research Purposes

Restricted data may be released to external users for research purposes. The request must include an Application for Release of Restricted Data (see example, Attachment 1: Model Document 1) along with the Data Use Agreement (Attachment 2) and a research protocol and proof of approval by, or exemption from, an Institutional Review Board, if applicable.

If it is determined that part or all of a data request can be accomplished through in-house analysis, use of unrestricted data or the creation of proxy variables, the Maine CDC reserves the right to create such products to fill a request, rather than release the restricted data.

4. To Carry out Statutory or Municipal Obligations

For specific entities (such as municipal health departments) data sharing is necessary to carry out statutory or municipal obligations, or if the outside entity meets the following criteria:

- Its mission contributes to fulfilling an identified public health role, (this may be demonstrated through existing statute(s) or local ordinances); and
- It has staff who have demonstrated competence in epidemiology, data security and confidentiality and
- It has demonstrated the need to know the information requested.

Data sharing with these entities requires a contract, memorandum of understanding (MOU) or agreement (MOA), trading partner agreement, client consent statement, or other written agreement that holds the organization/individual accountable to this rule.

STATUTORY AUTHORITY: 22 MRS 42 and 22 MRS §824

EFFECTIVE DATE:

Maine Revised Statutes

Title 22: HEALTH AND WELFARE

Chapter 1: DEPARTMENT OF HEALTH AND HUMAN SERVICES HEADING: PL 2003, c. 689, Pt. B, §6 (rev)

§42. RULES AND REGULATIONS

1. General. The department shall issue rules and regulations considered necessary and proper for the protection of life, health and welfare, and the successful operation of the health and welfare laws. The rules and regulations shall be adopted pursuant to the requirements of the Maine Administrative Procedure Act.

[1977, c. 694, §331 (AMD) .]

1-A. Administration of medication. The administration of medication in boarding care facilities, drug treatment centers, day care facilities, children's homes and nursery schools and group home intermediate care facilities for persons with intellectual disabilities must be in accordance with rules established by the department. In other facilities licensed or approved by the department, excluding those facilities licensed under section 1811, other than group home intermediate care facilities for persons with intellectual disabilities, the department may establish rules for the administration of medication as it considers necessary. In establishing rules for each type of facility, the department shall consider, among other factors, the general health of the persons likely to receive medication, the number of persons served by the facility and the number of persons employed at the facility who might be involved in the administration of medication. Any rules for the administration of medication must be established in accordance with Title 5, chapter 375.

[2011, c. 542, Pt. A, §24 (AMD) .]

2. Department records. The department shall make and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications of the department, and especially those which pertain to the granting of public assistance. The use of such records, papers, files and communications by any other agency or department of government to which they may be furnished shall be limited to the purposes for which they are furnished and by the law under which they may be furnished. It shall be unlawful for any person, except for purposes directly connected with the administration of the public assistance and in accordance with the rules and regulations of the department, to solicit, disclose, receive, make use of or authorize, knowingly permit, participate in or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving such assistance, directly or indirectly, derived from the records, papers, files or communications of the State or subdivisions or agencies thereof, or acquired in the course of the performance of official duties. Any person violating any provision of this subsection shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both.

[1973, c. 521, §1 (RPR) .]

3. Subsurface sewage disposal. The department shall adopt minimum rules relating to subsurface sewage disposal systems. All rules, including installation and inspection rules, must be consistent with Title 30-A, chapter 185, subchapter III and Title 32, chapter 49, but this does not preempt the authority of municipalities under Title 30-A, section 3001 to adopt more restrictive ordinances. These rules may regulate the location of water supply wells to provide minimum separation distances from subsurface sewage disposal systems. The department may require a deed covenant or deed restriction when determined necessary.

Any person who violates the rules adopted under this subsection, or who violates a municipal ordinance adopted pursuant to Title 30-A, sections 4201 and 4211 or uses a subsurface waste water disposal system not in compliance with rules applicable at the time of installation or modification must be penalized in

accordance with Title 30-A, section 4452. Enforcement of the rules is the responsibility of the municipalities rather than the department. The department or a municipality may seek to enjoin violations of the rules or municipal ordinances. In the prosecution of a violation by a municipality, the court shall award reasonable attorney's fees to a municipality if that municipality is the prevailing party, unless the court finds that special circumstances make the award of these fees unjust.

[1997, c. 727, Pt. C, §4 (AMD) .]

3-A. Licensing of persons to evaluate soils for subsurface wastewater disposal systems. The department shall adopt rules providing for professional qualification and competence, ethical standards, licensing and relicensing and revocation of licenses of persons to evaluate soils for the purpose of designing subsurface wastewater disposal systems. The hearings provided for in subsection 3 must include consideration of the adoption or change of those rules.

The department shall investigate or cause to be investigated all cases or complaints of noncompliance with or violations of this section and the rules adopted pursuant to this section. The department has the authority to grant or amend, modify or refuse to issue or renew a license in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter V. The District Court has the exclusive jurisdiction to suspend or revoke the license of any person who is found guilty of noncompliance with or violation of the rules adopted pursuant to this subsection or subsection 3.

The department may charge applicants no more than \$100 for examination to become a licensed site evaluator. The department shall by rule charge a biennial site evaluator license fee of not more than \$150. A licensed site evaluator who is employed by the department to administer this section and does not practice for the public is exempt from the licensee fee requirement. Appropriate rules must be adopted by the department defining the appropriate financial procedure. The fees are paid to the Treasurer of State to be maintained as a permanent fund and used by the department for carrying out its plumbing and subsurface wastewater disposal rules and site evaluation program.

[1999, c. 86, §1 (AMD); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

3-B. Inspection of plumbing and subsurface waste water disposal systems. The department shall adopt rules providing for the inspection of plumbing and subsurface waste water disposal systems. In municipalities, the municipal officers shall provide for the appointment of one or more plumbing inspectors. In plantations, the assessors shall appoint plumbing inspectors in accordance with Title 30-A, section 4221. In the unorganized areas of the State, the department shall appoint plumbing inspectors or act in the capacity of a plumbing inspector until a person is appointed.

[1991, c. 824, Pt. A, §39 (AMD) .]

4. Industrial employees.

[1977, c. 83, §2 (RP) .]

5. Confidentiality of records containing certain medical information. Department records that contain personally identifying medical information that are created or obtained in connection with the department's public health activities or programs are confidential. These records include, but are not limited to, information on genetic, communicable, occupational or environmental disease entities, and information gathered from public health nurse activities, or any program for which the department collects personally identifying medical information.

The department's confidential records may not be open to public inspection, are not public records for purposes of Title 1, chapter 13, subchapter 1 and may not be examined in any judicial, executive, legislative or other proceeding as to the existence or content of any individual's records obtained by the department.

Exceptions to this subsection include release of medical and epidemiologic information in such a manner that an individual can not be identified; disclosures that are necessary to carry out the provisions of chapter 250; disclosures made upon written authorization by the subject of the record, except as otherwise provided in this section; and disclosures that are specifically provided for by statute or by departmental rule. The department may participate in a regional or national tracking system as provided in sections 1533 and 8824.

Nothing in this subsection precludes the department, during the data collection phase of an epidemiologic investigation, from refusing to allow the inspection or copying of any record or survey instrument, including any redacted record or survey instrument, containing information pertaining to an identifiable individual that has been collected in the course of that investigation. The department's refusal is not reviewable.

[2009, c. 514, §1 (AMD) .]

6. Preadministrative hearing settlement process. The department may adopt rules to establish a preadministrative hearing settlement process. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

[1997, c. 218, §1 (NEW) .]

7. Appeal process. The department shall amend the rules governing appeals of informal review decisions of MaineCare payment and cost report audit and review issues filed by MaineCare providers of goods and services or initiated by the department and any other informal review decisions that seek to impose repayment, recovery or recoupment obligations or sanctions or fines on providers as provided in this subsection.

A. The department shall allow a provider 60 days after the provider's receipt of an audit report, examination report or other audit determination to seek informal review of that determination. The department shall give to the provider involved in an informal review decision written notice of the informal review decision and of the appeal process and the time period for filing a notice of appeal. The department shall allow an additional 60 days for a provider to request an appeal hearing for review of the department's informal review decision. [2005, c. 588, §3 (AMD) .]

B. [2003, c. 419, §2 (RP) .]

C. Compensation under any contract into which the department enters for hearing officer services may reflect the number of appeals on which recommendations are made by the hearing officer and may not reflect the substance of the recommendations made by the hearing officer. [2003, c. 419, §2 (AMD) .]

D. The hearing officer shall conduct a hearing de novo on issues raised in the notice of appeal filed by the provider and shall in a timely manner render a written recommendation based on the record and in accordance with applicable state and federal law, rule and regulation. The hearing officer shall provide a copy of the recommendation to the department and to the provider along with notice of the opportunity to submit written comments to the commissioner. [2001, c. 666, Pt. C, §1 (NEW) .]

E. The recommendation of the hearing officer must be forwarded to the commissioner for a final decision, based on the record, which must include any written comment submitted in a timely manner by the provider and the department. The commissioner may adopt, adopt with modification or reject the recommendation of the hearing officer. The commissioner shall issue a final decision in writing, which must include the reasons for any departure from the recommendation of the hearing officer and notice of the process for appeal pursuant to Title 5, chapter 375, subchapter 7. If the commissioner deviates from a prior decision cited in the course of a proceeding, the final decision must include an explanation of the reason that the prior decision was not followed. [2003, c. 419, §2 (AMD) .]

F. By July 1, 2004 the department shall make available on its publicly accessible website the decisions in all MaineCare provider appeals beginning January 1, 2004, including the recommendations of the hearing officer and the decision of the commissioner. By October 1, 2006 the department shall make available on the same website all decisions issued by the department regarding audit findings, audit

reports or examination reports, including final informal review decisions issued as well as decisions on appeal pursuant to the Maine Uniform Accounting and Auditing Practices Act for Community Agencies. The Office of Audit for MaineCare and Social Services also shall include on the website a summary of key interpretations and findings in recent audits that, in the opinion of the office, are to be considered generally by providers in their operations and cost reporting.

(1) The website must include a search feature allowing users to obtain information on specific issues of interest.

(2) The website must protect information that is personal or confidential. [2005, c. 588, §4 (AMD) .]

G. In lieu of the appeal procedure provided in this subsection, the parties may choose arbitration by a qualified arbitrator or panel of arbitrators as provided in this paragraph. By January 1, 2004, the department shall adopt rules to implement this paragraph that are consistent with federal law and regulation. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

(1) The arbitrator or panel of arbitrators must be selected and compensated as agreed by the parties.

(2) Arbitration under this paragraph is available only when the amount in controversy is \$10,000 or less and the subject matter in controversy is assessments, recovery or recoupment orders, sanctions or administrative fines.

(3) A provider choosing arbitration under this paragraph may waive any right of appeal. [2003, c. 419, §2 (NEW) .]

H. In an administrative appeal of an informal review decision under this subsection, the department bears the burden of proving a violation of law or rule by a preponderance of the evidence. If the department proves that existing and available records of goods or services are defective, the department may impose a penalty or sanction, including total recoupment. Total recoupment for defective records is warranted only when the provider has failed to demonstrate by a preponderance of the evidence that the disputed goods or services were medically necessary, MaineCare-covered goods or services and were actually provided to eligible MaineCare members. [2003, c. 688, Pt. C, §7 (AMD) .]

The department shall provide funding for contractual services under this subsection from within existing resources.

[2005, c. 588, §§3, 4 (AMD) .]

8. Adoption of rules with retroactive application. The department is authorized to adopt rules that have a retroactive application for a period not to exceed 8 calendar quarters prior to the date of issuance of the rule in accordance with the provisions of this subsection.

A. The Bureau of Medical Services is authorized to adopt rules that have retroactive application when necessary to maximize available federal revenue sources, specifically regarding the federal Medicaid program, or to conform to the state Medicaid plan as filed with the Federal Government. The Bureau of Family Independence is authorized to adopt rules in the MaineCare, Temporary Assistance for Needy Families and food stamp programs that have retroactive application to comply with federal requirements or to conform to the state Medicaid plan as filed with the Federal Government. [2003, c. 612, §1 (NEW) .]

B. With respect to any services that MaineCare providers have rendered prior to the date of adoption of retroactive rules adopted pursuant to this subsection, such rules may not reduce or otherwise negatively affect the reimbursement or other payments that those providers are entitled to receive under the previously applicable rules. The reimbursement or other payments under the amended rules must be equal to or greater than the reimbursement under the rules previously in effect. The rules may retroactively increase provider reimbursement on an emergency basis if needed to ensure that MaineCare members have access to covered medically necessary services. [2005, c. 648, §1 (AMD) .]

C. For any benefits or services in the MaineCare, Temporary Assistance for Needy Families or food stamp programs that beneficiaries have received prior to the date of adoption of retroactive rules adopted pursuant to this subsection, such rules may not reduce or otherwise negatively affect the reimbursement or other payments, benefits or services that those beneficiaries are entitled to have covered or paid under the previously applicable rules. The reimbursement or other payments, benefits or services under the amended rules must be equal to or greater than under the rules previously in effect. [2003, c. 612, §1 (NEW).]

D. This subsection does not give the department the authority to adopt retroactively any rule that has an adverse financial impact on any MaineCare provider or member, Temporary Assistance for Needy Families program or food stamp recipient or the beneficiary or recipient of any other program administered by the department. Specific statutory authority is required for adoption of a retroactive rule that has an adverse financial impact on any MaineCare provider or member, Temporary Assistance for Needy Families program or food stamp recipient or the beneficiary or recipient of any other program administered by the department. [2003, c. 612, §1 (NEW).]

E. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A; except that, if the underlying statutory rule-making authority for a rule or set of rules specifies that rules adopted pursuant to that authority are major substantive rules, then the related rule or rules adopted under this subsection are major substantive rules. [2003, c. 612, §1 (NEW).]

F. [2005, c. 648, §2 (RP).]

[2005, c. 648, §§1, 2 (AMD) .]

9. Effective date of newly adopted rules. Notwithstanding any other provision of law, when the department adopts a rule affecting a process or procedural change for licensed health care providers, the rule may not take effect for at least 30 days unless the department determines that an emergency rule is necessary pursuant to Title 5, section 8054 or unless the rule affects reimbursement rates applicable to those licensed health care providers. For the purposes of this subsection, "licensed health care provider" means a physician, clinic, hospital, health maintenance organization, home health agency, private clinical laboratory or other person who provides primary health care services and is registered or licensed by the State.

[2005, c. 241, §1 (NEW) .]

SECTION HISTORY

1967, c. 233, (AMD). 1973, c. 521, §1 (RPR). 1975, c. 293, §4 (AMD). 1975, c. 760, §§3,4 (AMD). 1975, c. 762, §1 (AMD). 1977, c. 83, §2 (AMD). 1977, c. 286, §1 (AMD). 1977, c. 497, §2 (AMD). 1977, c. 694, §§331,332 (AMD). 1979, c. 244, (AMD). 1979, c. 390, (AMD). 1981, c. 38, §§1-3 (AMD). 1981, c. 60, (AMD). 1981, c. 376, §§1-3 (AMD). 1983, c. 284, §1 (AMD). 1983, c. 796, §8 (AMD). 1985, c. 612, §§1-3 (AMD). 1987, c. 737, §§C64,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C4,C8,C10 (AMD). 1989, c. 483, §A32 (AMD). 1989, c. 878, §A53 (AMD). 1991, c. 548, §A16 (AMD). 1991, c. 824, §A39 (AMD). 1991, c. 827, §1 (AMD). 1991, c. 827, §2 (AFF). 1993, c. 295, §1 (AMD). 1997, c. 218, §1 (AMD). 1997, c. 727, §C4 (AMD). 1999, c. 86, §1 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 407, §1 (AMD). 2001, c. 666, §C1 (AMD). 2003, c. 419, §2 (AMD). 2003, c. 612, §1 (AMD). 2003, c. 613, §2 (AMD). 2003, c. 688, §C7 (AMD). 2005, c. 241, §1 (AMD). 2005, c. 588, §§3,4 (AMD). 2005, c. 648, §§1,2 (AMD). 2007, c. 508, §1 (AMD). 2009, c. 514, §1 (AMD). 2011, c. 542, Pt. A, §24 (AMD).

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Maine Revised Statutes

Title 22: HEALTH AND WELFARE

Chapter 250: CONTROL OF NOTIFIABLE DISEASES AND CONDITIONS

HEADING: PL 1989, c. 487, §11 (rpr); 2005, c. 383, §1 (rpr)

§824. CONFIDENTIALITY

Any person who receives information pursuant to this chapter shall treat as confidential the names of individuals having or suspected of having a notifiable disease or condition, as well as any other information that may identify those individuals. This information may be released to the department for adult or child protection purposes in accordance with chapters 958-A and 1071, or to other public health officials, agents or agencies or to officials of a school where a child is enrolled, for public health purposes, but that release of information must be made in accordance with Title 5, chapter 501, where applicable. In the event of an actual or threatened epidemic or outbreak or public health threat or emergency, as declared by the Director of the Bureau of Health, the information may also be released to private health care providers and health and human services agencies for the purpose of carrying out public health functions as authorized by this chapter. Information not reasonably required for the purposes of this section may not be released. All information submitted pursuant to this chapter that does not name or otherwise identify individuals having or suspected of having a notifiable disease or condition may be made available to the public at the sole discretion of the department. [2005, c. 383, §19 (AMD).]

Any person receiving a disclosure of identifying information pursuant to this chapter may not further disclose this information without the consent of the infected person. [1989, c. 487, §11 (NEW).]

SECTION HISTORY

1989, c. 487, §11 (NEW). 2005, c. 383, §19 (AMD).

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STATE OF MAINE
WALDO, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. BELSC-CV-15-12

ADAM FLANDERS,

Plaintiff,

v.

STATE OF MAINE, KNOX COUNTY
DISTRICT ATTORNEY, and MAINE STATE
POLICE,

Defendants.

**ORDER AND DECISION ON
DEFENDANTS' MOTION
FOR JUDGMENT**

Before the Court is Defendants Knox County District Attorney's and Maine State Police's ("Defendants") Motion for Judgment. Specifically, the Defendants request the Court deny Adam Flanders' ("Flanders") appeal made pursuant to the Maine Freedom of Access Act ("FOAA"), 1 M.R.S. § 409(1), uphold Defendants' denials of Flanders' requests for documents, and deny Flanders' request for litigation expenses. For the following reasons, the Motion is granted in part and denied in part.

BACKGROUND¹

Flanders' FOAA requests relate to discovery associated with his underlying 2008 convictions, representing three separate incidences of conduct.² (Stips. ¶ 1-9.) Flanders subsequently filed two *pro se* petitions for post-conviction review on the underlying convictions

¹ The Court draws the below facts from the Stipulations that Defendants submitted to Flanders on November 3, 2015, pursuant to this Court's Order of October 7, 2015. In his Response to Stipulations, Flanders indicated that he does "not contest the stipulated facts dated November 3, 2015, in any way that would require an evidentiary hearing." (Pl.'s Resp. to Stip. 1.) Therefore, the Court does not consider the additional documents Flanders submitted as proposed exhibits.

² Docket Nos.: ROCSC-CR-07-08; ROCSC-CR-07-90; BELDC-CR-08-723.

and sentences, which were later consolidated.³ (*Id.* ¶ 10.) The Superior Court, (*Hjelm, J.*), held a hearing on the consolidated petitions on March 10, 2011 and subsequently issued a decision modifying the periods of probations for the sentences on two counts in ROCSC-CR-07-90, but otherwise denying both petitions. (*Id.* ¶¶ 10-13.)

On November 27, 2014, Flanders submitted a written FOAA request to the Maine State Police for the following documents (hereinafter “FOAA requests ## 1, 2”) related to Docket Nos. ROCSC-CR-07-80 and ROCSC-CR-07-90:

1. The entire computer crime lab report/case report for 07-LEW-4568-OF, the associated search warrant, and any documents related to this investigation into “possession of sexually explicit materials.”
2. A full digital copy of any hard drive copies the MCCU [Maine Computer Crimes Unit] has in its possession that directly related to me [Flanders] and/or my previously seized computers.⁴

(*Id.* ¶ 14.) Christopher Parr, General Counsel for the Maine State Police, acknowledged receipt of the FOAA requests on December 3, 2014. (*Id.* ¶ 15.) On December 10, 2014, he wrote to Flanders setting forth the basis for denial of access to some of the requested materials, the time period for processing the request, and the estimated fee for copies of any public records. (*Id.*) On January 13, 2015, Parr indicated to Flanders that redacted records responsive to FOAA requests ## 1 and 2 would be sent to Flanders upon receipt of the \$10 fee for copies. (*Id.* ¶ 17.) Parr mailed Flanders redacted copies of the following on February 2, 2015:

- a) search warrant affidavit of Det. Russell Thompson of the Rockland Police Department, dated Feb. 22, 2007, and search warrant signed by court on the same date;

³ Docket Nos.: ROCSC-CR-09-212; ROCSC-CR-08-338.

⁴ Previously, seeking this same material, Flanders submitted FOAA requests to the Maine State Police and Knox County District Attorney’s Office on two occasions in 2012. Both agencies denied his requests on the grounds that the requests sought confidential intelligence and investigative record information.

- b) evidence log, Rockland Police Department;
- c) property invoice, Maine State Police, Computer Crimes Task Force;
- d) a file note re: delivery of computer;
- e) evidence log, Lewiston Police Department;
- f) Lewiston Police Department Incident Report.⁵

(*Id.* ¶ 18.) Flanders confirmed receipt and requested from Parr the following documents relating to the Maine Computer Crimes Task Force analysis of his computer:

- 1) the "Internet History Report"
- 2) the "Drive Geometry Report"
- 3) the "Encase Report"

(*Id.* ¶¶ 19-20.) The Maine State Police denied access. (*Id.* ¶ 20.) Flanders had previously requested these same materials from the Maine State Police on March 7, 2012; that request was denied. (*Id.*)

The Maine State Police returned the computer to Flanders with the hard drive and all files completely intact in 2008. (*Id.* ¶ 21.) On February 26, 2015, in response to further emails from Flanders, Parr repeated that the Maine State Police would not be providing any additional records responsive to Flanders' FOAA request for the reasons previously stated in letters dated December 10, 2014, and February 2, 2015. (*Id.* ¶ 22.)

On November 27, 2014, Flanders submitted a FOAA request to the Knox County District Attorney's Office, including FOAA requests ## 1 and 2, which he sought in his letter of the same date to the Maine State Police (Ex. 16), plus the following nine requests:⁶

- 3. "audio recordings between Flanders and Officer Lindahl," as noted in the discovery checklist.

⁵ Defendants submitted to the Court sealed, unredacted copies of these records, as well as examples of the confidential documents responsive to the request that were withheld.

⁶ FOAA Requests ## 3 through 6 concern Docket Nos. ROCSC-CR-07-80 and ROCSC-CR-07-90. FOAA Requests ## 7 through 11 concern Docket No. BELDC-CR-08-723.

4. "Recording of E 9-1-1 call made to Knox Communications," as noted in the discovery checklist. Specifically, audio recordings and/or transcripts of the E 9-1-1 calls made by Christopher Lowell and Danielle Lee/Lowell.
5. Any recordings or documentation relating to Danielle Lee/Lowell including any contact with law enforcement or verbal or written statements.
6. The juvenile criminal record of Joshua Lowell.

BELDC-CR-08-723

7. The recording of the June 10, 2008, interview between Brian Sanders and Detective McFadden, as well as any other recordings between Brian Sanders and any other law enforcement individuals (other than the June 12, 2008, recording, which I [Flanders] have).
8. Any recordings between law enforcement and the parents or family members of Brian Sanders, including recordings of meetings among these parties and law enforcement.
9. Any documents bearing the signatures of Brian Sanders or the parents or other family members of Brian Sanders and any statements written by Brian Sanders or the parents or family members of Brian Sanders.
10. Any recordings or documentation referencing the 8/27/2008 plea discussion between DA Geoffrey Rushlau, Defense Attorney Robert Smith, and Officer Michael McFadden, including any information associated with the discussion concerning my computer and allegations of child porn possession.
11. Documentation that would explain why my computer was investigated following my conviction and sentencing.

(*Id.* ¶ 23.)

Soon after receiving Flanders' November 27, 2014, FOAA request, Geoffrey Rushlau, Knox County District Attorney, became aware that Flanders also had made the first two of these requests to the Maine State Police on November 27, 2014, (as well as in 2012), and that Chris Parr of the Maine State Police would be responding. (*Id.* ¶ 25.) The Knox County District Attorney's office had previously provided Flanders' counsel with discovery materials relating to all three criminal matters referenced in Flanders' FOAA requests on several occasions. Rushlau

also had provided copies of discovery materials to Flanders' attorney, William Maselli, Esq., in the post-conviction review cases. (*Id.* ¶¶ 26-27.)

On March 5, 2015, Flanders renewed FOAA requests ## 1-11 to the Knox County District Attorney's Office and added the following requests, numbered here for reference as FOAA requests ##12 and 13:

12. Information relating to the investigation and indictment against Christopher Lowell for the Class C crime of "Theft by Unauthorized Taking or Transfer."
13. Information relating to the Knox County DA's decision not to prosecute Joshua Lowell for violating probation for a third time (resulting from his contact with me, which was forbidden by his probation conditions.

(*Id.* ¶ 28.) On March 31, 2015, Rushlau responded in writing to Flanders' November and March FOAA requests. (*Id.* ¶ 29.) The Stipulated Facts summarize the responses as follows:

30. The materials sought in FOAA request #1 have been withheld by defendants for reasons set forth in numerous denial letters.
31. The District Attorney's Office has no documents responsive to FOAA request #2.
32. The recording referenced in FOAA request #3 was provided to Flanders' counsel in discovery on December 23, 2010. The only copy of that recording currently in Defendant Rushlau's possession is defective and cannot be accessed.
33. The recording of the E 9-1-1 calls made by Christopher Lowell and Danielle Lee/Lowell referenced in FOAA request #4 is confidential pursuant to 25 M.R.S. § 2929 and access was denied. Since District Attorney Rushlau's denial, a redacted transcript of the recording has been prepared and is being provided to Flanders pursuant to 25 M.R.S. § 2929.
34. Defendant have no documents in their possession, custody or control responsive to FOAA request #5, except as previously referenced in response to FOAA request #4.
35. To the extent FOAA request #6 seeks juvenile intelligence and investigative record information, District Attorney Rushlau denied the request, and advised Flanders that a court order was required to release

any such confidential information. To the extent FOAA request #6 seeks the juvenile criminal record [dispositions] of Joshua Lowell, District Attorney Rushlau advised Flanders that public disposition information would be available from the court. In January 2010, Flanders had requested this same information and District Attorney Rushlau provided the same response.

36. Defendants have no recording in their possession, custody or control that is responsive to FOAA request #7. The recording of an interview with Brian Sanders on June 10, 2008, was provided by the Knox County District Attorney's Office to Flanders, attorney in 2010, during discovery in the post-conviction review matter, but the office did not retain a copy and Flanders' attorney did not respond to a request that he return a copy.
37. Defendants have no recordings in their possession, custody or control that are responsive to FOAA request #8.
38. Defendants have no documents in their possession, custody or control that are responsive to FOAA request #9.
39. Defendants have no documents in their possession, custody or control that are responsive to FOAA request #10.
40. The only document responsive to FOAA request #11 is a letter from District Attorney Rushlau to Flanders, dated March 2, 2010. Ex. 29A.
41. Defendants have withheld documents responsive to FOAA request #12 on the ground that all of the requested material is confidential intelligence and investigative record information.
42. Defendants have no documents in their possession, custody or control that are responsive to FOAA request #13.

(*Id.* ¶¶ 30-42.)

Flanders filed his appeal March 15, 2015. Defendants filed the pending Motion for Judgment on December 11, 2015.

ANALYSIS

I. Standard of Review

The basic purpose of FOAA "is ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to

the governed." *Mainetoday Media, Inc. v. State*, 2013 ME 100, ¶ 8, 82 A.3d 104; 1 M.R.S. § 401. Generally, "[e]xcept as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record." 1 M.R.S. § 408-A. Where a petitioner's request has been denied, the government actor bears the burden of "establishing that there is just and proper cause for the denial." *Bowler v. State*, 2014 ME 157, ¶ 4, 108 A.3d 1257. The court shall liberally construe FOAA's general requirement of disclosure and, as a "necessary corollary," strictly construe any exceptions to that general requirement. *Mainetoday Media, Inc.*, 2013 ME 100, ¶¶ 8-9, 82 A.3d 104. "When a public record contains information that is not subject to disclosure under FOAA, the information may be redacted to prevent disclosure." *Doyle v. Town of Falmouth*, 2014 ME 151, ¶ 9, 106 A.3d 1145.

II. Grounds for Non-disclosure

Defendants divide Flanders' 13 requests into three categories: (A) records that the Defendants do not have; (B) records that have been provided to Flanders in response to the request; and (C) records to which Flanders is not entitled under FOAA because of the confidentiality provisions of the Intelligence and Investigative Record Information Act, 16 M.R.S. §§ 801-09, the Criminal History Record Information Act, 16 M.R.S. §§ 701-10, and the Juvenile Code, 15 M.R.S. §§ 3001 *et seq.* The Court adopts this framework to evaluate whether Defendants have met their burden of establishing just and proper cause for their denials.

A. *FOAA Requests ## 5, 7, 8, 9 and 10: Records That Defendants Do Not Have*

Defendants denied FOAA requests ## 5, 7, 8, 9, and 10 on the basis that the Defendants do not have any documents responsive to those requests. In reviewing Flanders' submission on this Motion, the Court finds one direct response to the Defendants' denial of these five requests.

Regarding Defendants' response to request # 5, Flanders responds that Defendants' response is "implausible." (Pl.'s Resp. Stip. 3.) He alternatively requests "an explanation as to why Danielle Lowell was precluded from the investigation." (*Id.*) FOAA does not require an agency or official to create a record that does not exist. 1 M.R.S. § 408-A(6). Therefore, based on its review of the record, the Court upholds Defendants denials on FOAA requests ## 5, 7, 8, 9, and 10.

B. FOAA Requests ## 3, 4, 11, and 13: *Requests That Have Been Provided*

Defendants denied FOAA requests ## 3, 4, 11, and 13 on the basis that Defendants have already provided the only documents they have that are responsive to those requests. The implied reason for denial here appears to be that to provide the same material again would be burdensome or oppressive. Indeed, FOAA provides, "[a] request for inspection or copying may be denied, in whole or in part, on the basis that the request is unduly burdensome or oppressive." However, the basis for denial is effective only "if the procedures established in subsection 4-A are followed." *Id.* § 408-A(4). From the record, it does not appear that Defendants followed the procedures established in subsection 4-A.⁷ Therefore, to the extent the documents have not been provided in response to these specific requests, the Court orders disclosure of documents already provided in response to ## 3, 4, 11, and 13.

C. FOAA Requests ## 1, 2, 6, and 12: *Requests Withheld as Confidential*

This leaves only four of Flanders' FOAA requests at issue: FOAA requests ## 1, 2, 6, and 12. The Court addresses each request in turn.

⁷ "A body, an agency or official may seek protection from a request for inspection or copying that is unduly burdensome or oppressive by filing an action for an order of protection in the Superior Court for the county where the request for records was made within 30 days of receipt of the request." 1 M.R.S. § 408-A(4-A).

1. The entire computer crime lab report/case report for 07-LEW-4568-OF, the associated search warrant, and any documents related to this investigation into “possession of sexually explicit materials.”

- i. Repeated requests

Flanders requested the very same material from both Defendants on March 7, 2012, (Ex. 18A), and did not appeal when Defendants denied access pursuant to the Maine Criminal History Record Information Act.⁸ (Ex. 19A & 19B). In his 2012 requests to the Maine State Police and District Attorney, Flanders specifically sought the “Internet History Report,” “Drive Geometry Report,” and “Encase Report” referenced in the Computer Crimes Task Force Report #07-LEW-4568-OF. (Exs. 18A & 18B, 1.) When Flanders asked for these materials again in a FOAA request to the Maine State Police on February 7, 2015, (Ex. 22), following up on his November 2014 request, access was denied for the same reasons. (See Exs. 23A, 23B & 26.)

Defendants argue that these repeated requests in 2014 and 2015 should not be treated as new requests since they were previously denied and not appealed in a timely fashion pursuant to 1 M.R.S. § 409(1). The Court is not persuaded the appeal should be dismissed on the grounds that it is a repeated request. FOAA contains no explicit prohibition on repeated requests. There are, however, explicit procedures for an agency or official to deny a request on the basis compliance would be unduly burdensome or oppressive. 1 M.R.S. § 408-A(4). Therefore, the Court proceeds to Defendants substantive arguments for upholding the denials.

- ii. Limitations on dissemination of intelligence and investigative record information

⁸ The applicable provisions on intelligence and investigative record information were at that time contained within the Maine Criminal History Record Information Act, 16 M.R.S. Chapter 3, subchapter 8. Those provisions were subsequently moved to a new subchapter 9 of title 16, entitled the Intelligence and Investigative Records Information Act, pursuant to P.L. 2013, ch. 267, § A-3 (eff. Oct 9, 2013).

Defendants maintain that Flanders is not entitled to access the records within the scope of FOAA request #1 that were withheld by Defendants, either in whole or in part, because the withheld materials are intelligence and investigative record information deemed confidential by 16 M.R.S. § 803(7).

The Maine State Police did provide copies of several documents to Flanders in response to this request, with redactions to withhold confidential material. The Court reviewed the unredacted versions submitted for *in camera* review. These documents include: a search warrant affidavit, a search warrant, an evidence log of the Rockland Police Department, a property invoice of the Maine State Police Computer Crimes Task Force, a file not regarding delivery of the computer, an evidence log of the Lewiston Police Department, and a Lewiston Police Department Incident report (this last unredacted). (Stips. ¶ 18; Exs. 20, 21.)

Except for an “[a]ccused [p]erson” or other person or entity authorized by 16 M.R.S. §§ 805 and 806, “a record that is or contains intelligence and investigative record information is confidential and may not be disseminated by a Maine criminal justice agency to any person or public or private entity if there is a reasonable possibility that public release or inspection of the record would,” in relevant part, “[c]onstitute an invasion of privacy,” “[d]isclose investigative techniques or security plans,” and/or “[e]ndanger law enforcement of others.” 16 M.R.S. 804(3), (7), (8).

Further, Defendants, as holders of confidential intelligence and investigative record information, “may not confirm the existence or nonexistence of intelligence and investigative record information confidential under section 304 to any person or public or private entity that is not eligible to receive the information itself.” 16 M.R.S. § 807. And, “[a] person who is the subject of intelligence and investigative record information maintained by a criminal justice

agency has no right to inspect or review that information for accuracy or completeness.” 16

M.R.S. § 808.

Defendants withheld that material responsive to this request based on their conclusion that the material fell within the three subsections noted above and that Flanders as not an “accused person” entitled to review the confidential material. As noted in the Index to Withheld Records filed with this Motion, the investigative materials that Flanders seeks in request #1 include medical records, crime scene photographs, victim and witness statements and victim correspondence. Defendants concluded that release of any of this material could result in an unwarranted invasion of these individuals’ personal privacy. The “Encase report” generated by the Maine Computer Crimes Task Force in its forensic examination of Plaintiff’s computer contain sexually suggestive photographs, including those of a minor victim. The “Internet History” report contains photographs and information relating to social media accounts of unknown individuals. Defendants concluded that the privacy of these individuals could be seriously invaded by public release of these records, and their personal safety could be at risk as a result. All four of the Maine Computer Crimes Task Force reports that were withheld also contain technical data and descriptions of investigative techniques used in forensic examination of computers in various types of criminal investigations including child pornography. Defendants concluded that release of this information could reveal investigative techniques, procedures, and methodologies that are not generally known to the public and could impede future law enforcement investigations in very serious criminal matters.

As determined by the Legislature, these are just and proper reasons for denying a FOAA request. Furthermore, the Court concludes Flanders is not an “accused person” who would be entitled to this confidential material for purposes of trial and sentencing. The statute defines an

“accused person” as a “person accused of a crime.” 16 M.R.S. § 805(3). Flanders, having been convicted and having exhausted the appellate process for the underlying convictions, is no longer an “accused person.” He is now a member of the general public. As a member of the public, Flanders has no special standing to request these materials. Finding no indication of bad faith or misrepresentation in the record submitted for review regarding this request and responses to it, the Court upholds Defendants denial of Flanders’ FOAA request #1.

2. A full digital copy of any hard drive copies the MCCU [Maine Computer Crimes Unit] has in its possession that directly relate to me [Flanders] and/or my previously seized computers.

Defendants denied this request on the basis that there exists no record technically responsive to what is requested. What Maine State Police Computer Crimes Unit (MCCU) has, Defendants explain, are images of data in a proprietary format that correspond to information that was retrieved from the hard drives of two laptops belonging to Flanders. They maintain these proprietary images are not analogous to “photocopies” of Plaintiff’s laptop hard drives, but are translations of the data on the hard drives that allowed the MCCU to conduct a forensic exam of the hard drives. To be comprehended, Flanders would have to read them by using licensed, proprietary software known as “Encase.” Defendants denied this request, in part, on the basis that review of the data that the MCCU collected would disclose investigative techniques and procedures not known by the general public, which could interfere with law enforcement investigations. *See* 16 M.R.S. § 804(1), (7).

Defendants further argue that even if the images the MCCU has are deemed within the scope of this request, Flanders is not entitled to access them because public disclosure would constitute an unwarranted invasion of personal privacy (including the privacy of the minor who was a victim of Flanders’ 2007 assault) and could endanger the physical safety of those

individuals. *See* 16 M.R.S. § 804(3) & (8). Again, Flanders is a member of the public and not entitled to review documents falling within these subsections. Finding no indication of bad faith or misrepresentation in the record submitted for review regarding this request and responses to it, the Court upholds Defendants denial of Flanders' FOAA request # 2.

6. The juvenile criminal record of Joshua Lowell.

Joshua Lowell is one of Flanders' victims in the underlying criminal actions. (*See* Exs. 1, 2.) According to the record, Flanders was not an alleged victim of any of the offenses alleged to have been committed by Joshua Lowell.

Dissemination of any "juvenile crime information" or "juvenile intelligence and investigative record information" is governed by the Juvenile Code and the statutes governing the State Bureau of Identification (SBI) 15 M.R.S. §§ 3307-08-A; 25 M.R.S. § 1541. Flanders appears to be requesting the record of dispositions – "juvenile crime information."⁹ These records are available to the public only to the extent the underlying records and proceedings would have been open to the public, which is governed by 15 M.R.S. §§ 3307-08.

If Joshua Lowell, as a juvenile, had been found to have committed juvenile crimes in proceedings open to the public, Flanders could inspect those records at the court of adjudication subject to 15 M.R.S. § 3307(2) and any Administrative Order of the Court. Plaintiff was directed to the court by Rushlau in his March 31, 2015 response. (Ex. 32). Defendants confirmed that Rushlau's file did not contain any SBI record related to the juvenile. Ruchlau referred Flanders to the SBI or the court for any information that may be available; Defendants argue this was a judicious response in accordance with 15 M.R.S. § 3307 and 16 M.R.S. § 704.

⁹ Police reports and investigative materials collected by a criminal justice agency while performing the administration of juvenile justice is "juvenile intelligence and investigative record information," which are confidential pursuant to 15 M.R.S. § 3308-A.

Having reviewed the documents submitted for *in camera* review, and evaluated Defendants arguments in favor of non-disclosure, the Court concludes the denials were for just and proper cause. This decision is also consistent with the strong public policy in Maine that juvenile crime information is generally not publicly available. For example, dissemination of such information as it pertains to non-public juvenile proceedings is not even permitted to be made to a sentencing court where the court is sentencing an adult who has prior non-public juvenile criminal history. *See, e.g., State v. Brockelbank II*, 33 A.3d 925, 2011 ME 118, ¶¶ 16-18 (overview of statute and underlying policy; Brockelbank waived protection by voluntarily introducing information related to otherwise confidential juvenile adjudication).

12. **“Information relating to the investigation and indictment against Christopher Lowell for the Class C crime of “Theft by unauthorized Taking or Transfer.”**”

Christopher Lowell is one of the victims of Flanders’ past crimes. (Exs. 1, 2.) In response to this request, Ruchlau informed Flanders on March 31, 2015, that the Knox County District Attorney’s Office did not have information on a case responsive to the request, but that there was a Waldo County case involving Christopher Lowell that was dismissed in April 2009 after the subject’s death. (Ex. 32.)

The general rule is that confidential criminal history record information may not be released to members of the public. *See* 16 M.R.S. § 705. Confidential criminal history record information includes “[i]nformation disclosing that a criminal charge has been dismissed by a court with prejudice or dismissed with finality by a prosecutor other than as part of a plea agreement.” 16 M.R.S. § 703(2)(G). The Defendants argue, and the Court agrees, the information responsive to this request falls within this definition.

However, an exception to the general rule provides that information may be released to a person who has made “a specific inquiry to the criminal justice agency as to whether a named individual was summonsed, arrested or detained or had formal criminal charges initiated on a specific date.” 16 M.R.S. § 705(1)(E). If the Court were to interpret FOAA request # 12 as such an inquiry, it appears the Defendants complied when Rushlau informed Flanders that the specific crime about which Flanders inquired had been dismissed upon the death of the person charged.

Defendants argue its denial of the request to the extent it seeks confidential intelligence and investigative information is proper pursuant to 16 M.R.S. § 803(3), (7), (9) and Public Information and Confidentiality, Me. Admin. Order JB-05-20 (as amended by A. 1-15) (effective Jan. 14, 2015). Having reviewed the record and submissions of the parties, the Court concludes the denial is proper for the grounds cited by Defendants.

III. Flanders’ Remaining Allegations of Misconduct and Request for Litigation Costs

Flanders requests litigation expenses because he claims Defendants violated FOAA and acted in bad faith. FOAA authorizes an award of litigation expenses only to “the substantially prevailing plaintiff,” and only “if the court determines that the refusal or illegal action was committed in bad faith.” 1 M.R.S. § 409(4). The Court concludes litigation expenses are not warranted because although there was some conduct by Defendants not in strict compliance with FOAA, the overall actions of Defendants do not constitute bad faith and Flanders is not a substantially prevailing party.

Flanders argues Defendant Maine State Police violated FOAA by requiring him to pay ten dollars in advance for copies of the documents that were mailed to him in redacted form on February 2, 2015. (*See Stips.* ¶¶ 18-19.)

The relevant portion of FOAA on requiring payment in advance provides:

The agency or official having custody or control of a public record subject to a request under this section may require a requester to pay all or a portion of the estimated costs to complete the request prior to the search, retrieval, compiling, conversion and copying of the public record if:

- A. The estimated total cost exceeds \$100; or
- B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.

1 M.R.S. § 408-A(10). The Court agrees with Flanders that Defendants actions do not strictly comply with 1 M.R.S. § 408-A(10). As noted by the plain language above, Defendants were not permitted to require payment before mailing the documents after they search, retrieved, and compiled the documents requested. The Court finds Flanders' remaining arguments of bad faith unpersuasive.

Flanders is not a substantially prevailing plaintiff. The Court has upheld the majority of the denials and the violation of 1 M.R.S. § 408-A(10) was minor and not committed in bad faith. In this case, the Maine State Police did not require payment before taking these steps; they simply required payment before mailing the documents to Flanders. (*See Exs. 20, 21.*) Defendants' characterization of this as a prudent step to ensure receipt of payment is reasonable, even if ultimately wrong. Beyond this error, the Maine State Police adhered to the statutory requirements of FOAA by promptly acknowledging receipt of Plaintiff's request, (Ex. 17A), and advising him of the scope and grounds for partial denial as well as the estimated cost of producing the limited materials that could be disclosed. (Ex. 17B.) Indeed, review of the correspondence from general counsel for the Maine State Police to Plaintiff reveals that the Defendants took prompt action and provided extremely thorough responses to all of Plaintiff's

FOAA requests. (*See, e.g.*, Exs. 17A, 17B, 19A, 19B, 20, 21, 23A, 23B.)¹⁰ Flanders' request for litigation expenses is denied.

Despite the one instance of a technical violation noted above, the Court concludes that Flanders is not a substantially prevailing plaintiff and the Defendants did not act in bad faith.

CONCLUSION

Defendants have judiciously applied the proscriptions of the Criminal History Record Information Act, the Intelligence and Investigative Record Information Act, and the Juvenile Code to make available to Flanders those records that are publicly accessible under Maine's Freedom of Access Act. They have done so in response to repeated and repetitive requests from Flanders, in what the Court agrees appears to be a prolonged attempt to relitigate matters that should have been, and in many cases were, addressed in pre-trial motions in the criminal prosecutions against Flanders and in post-conviction review proceedings. Maine's FOAA is designed to ensure citizens access to public proceedings and records of those proceedings. 1 M.R.S. § 401. Flanders' use of it to relitigate matters long-since resolved in previous court proceedings is beyond the broad purpose of FOAA.

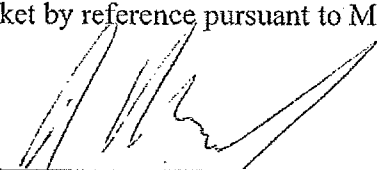
The Entry is:

1. The Court **DENIES** Plaintiff's appeal as it relates to Defendants denials of FOAA requests ## 1, 2, 5, 6, 7, 8, 9, 10 and 12.
2. Plaintiff's appeal is **GRANTED** in regards to Plaintiff's FOAA requests ## 3, 4, 11, and 13. The Court orders Defendants **DISCLOSE** documents already provided to Plaintiff that are responsive to current FOAA requests ## 3, 4, 11, and 13.

¹⁰ Given the duplicative and repetitive nature of Plaintiff's FOAA request, the District Attorney's delayed response to Plaintiff's November 27, 2014 FOAA request is understandable, and likewise does not reflect any lack of good faith. (*See* Stips. ¶¶ 16, 24-26 & 29; Exs. 32, 19C, 28, 29A-29H.)

3. The Court DENIES Plaintiff's request for litigation fees.
4. This Order shall be incorporated into the docket by reference pursuant to M.R. Civ. P. 79.

Dated: August 17, 2016



Robert Murray
Justice, Maine Superior Court



**STATE OF MAINE
128th LEGISLATURE
FIRST REGULAR SESSION**

**Eleventh Annual Report
of the
Right to Know Advisory Committee**

January 2017

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DRAFT

EXECUTIVE SUMMARY

[to be added]

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I. INTRODUCTION

This is the eleventh annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The Advisory Committee's authorizing legislation, located at Title 1, section 411, is included in **Appendix A**. Previous annual reports of the Advisory Committee can be found on the Advisory Committee's webpage at www.maine.gov/legis/opla/righttoknowreports.htm.

The Right to Know Advisory Committee has 17 members. The chair of the Advisory Committee is elected annually by the members. Current Advisory Committee members are:

Sen. David C. Burns Chair	<i>Senate member of Judiciary Committee, appointed by the President of the Senate</i>
Rep. Kimberly Monaghan	<i>House member of Judiciary Committee, appointed by the Speaker of the House</i>
Suzanne Goucher	<i>Representing broadcasting interests, appointed by the Speaker of the House</i>
Stephanie Grinnell	<i>Representing newspaper and other press interests, appointed by the President of the Senate</i>
A.J. Higgins	<i>Representing broadcasting interests, appointed by the President of the Senate</i>
Richard LaHaye	<i>Representing law enforcement interests, appointed by the President of the Senate</i>
Mary Ann Lynch	<i>Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court</i>
Judy Meyer	<i>Representing newspaper publishers, appointed by the Speaker of the House</i>
Kelly Morgan	<i>Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House</i>
Paul Nicklas	<i>Representing municipal interests, appointed by the Governor [appointed effective September 15, 2016]</i>
Christopher Parr	<i>Representing state government interests, appointed by the Governor</i>

Linda Pistner	<i>Attorney General's designee</i>
Harry Pringle	<i>Representing school interests, appointed by the Governor</i>
Helen Rankin	<i>Representing the public, appointed by the Speaker of the House</i>
Luke Rossignol	<i>Representing the public, appointed by the President of the Senate</i>
William Shorey	<i>Representing county or regional interests, appointed by the President of the Senate</i>
Eric Stout	<i>A member with broad experience in and understanding of issues and costs in multiple areas of information technology, appointed by the Governor</i>

The complete membership list of the Advisory Committee, including contact information, is included in **Appendix B**.

II. COMMITTEE DUTIES

The Right to Know Advisory Committee was created to serve as a resource and advisor about Maine's freedom of access laws. The Advisory Committee's specific duties include:

- Providing guidance in ensuring access to public records and public proceedings;
- Serving as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know;
- Supporting the provision of information about public access to records and proceedings via the Internet;
- Serving as a resource to support training and education about Maine's freedom of access laws;
- Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the state of Maine's freedom of access laws and the public's access to public proceedings and records;
- Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;

- ❑ Examining inconsistencies in statutory language and proposing clarifying standard language; and
- ❑ Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public.

In carrying out these duties, the Advisory Committee may conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss and consider solutions to problems concerning access to public proceedings and records.

The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws. The Advisory Committee is pleased to work with the Public Access Ombudsman, Brenda Kielty. Ms. Kielty is a valuable resource to the public and public officials and agencies.

By law, the Advisory Committee must meet at least four times per year. During 2016, the Advisory Committee met on June 22, July 20, August 17, September 14 and October _____. On September 14, 2016, the Advisory Committee held a public hearing to take comments and suggestions about how the Freedom of Access Act is working and how it might be improved, consistent with its goals of giving citizens adequate access to records and meetings of decision making bodies of government. The Advisory Committee specifically requested testimony on the following topic: *Considering the sensitive nature of certain information held by government entities, how could public access to government meetings and records be improved?*

Each meeting was open to the public and was also accessible through the audio link on the Legislature's webpage.

The Advisory Committee has also established a webpage, which can be found at www.maine.gov/legis/opla/righttoknow.htm. Agendas, meeting materials and summaries of the meetings are available on the webpage.

III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES

By law, the Advisory Committee serves as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know. In carrying out this duty, the Advisory Committee believes it is useful to include in its annual reports a digest of recent developments in case law relating to Maine's freedom of access laws. For its eleventh annual report, the Advisory Committee has identified and summarized the following Maine Supreme Judicial Court decision related to freedom of access issues.

Hughes Bros. v. Town of Eddington

In *Hughes Bros. v. Town of Eddington*, 2016 ME 13, 130 A.3d 978, Hughes Bros., Inc., a landowner seeking a permit to create a quarry, appealed a Superior Court decision determining that the Town of Eddington conducted a valid executive session for the purpose of consulting with counsel. The landowner sought an injunction directing the town to cease and desist from holding a public vote on proposed moratorium on quarries, and a declaration that any moratorium that might be approved was void because town violated open meeting requirements of Freedom of Access Act (FOAA) by holding a joint executive session of the board of selectmen and planning board. The Law Court held that the boards conducted a valid executive session, invoked for purpose of consulting with legal counsel regarding wording in proposed moratorium ordinance, and that FOAA does not prohibit municipal boards from holding executive sessions jointly in order to meet with legal counsel about how to comply with the law in carrying out their prospective duties.

In order for an executive session to be valid under FOAA, the following elements must be present: the executive session must be publicly announced; the purpose of the executive session must be permitted by law and described clearly; the executive session must be confined to statutorily authorized matters; it may not include any final approval of any official action; and records must be kept that are adequate for purposes of judicial review if an action is challenged. In this case, the administrative record demonstrated that the Town met its burden to show that all of these elements were present. The executive session was held for the limited and authorized purpose of consulting with counsel to draft a legally sound proposed ordinance for consideration at a later public meeting and the municipal ordinance was approved after consultation with counsel and public deliberation and vote in a meeting open to the public. And further, the Law Court stated that FOAA contains no prohibition against municipal boards holding joint executive sessions and the mere fact that boards share in the advice of counsel in a combined executive session is not a violation of FOAA.

IV. RIGHT TO KNOW ADVISORY COMMITTEE SUBCOMMITTEE

In prior years, the Right to Know Advisory Committee has divided its workload among various subcommittees that have reported recommendations back to the full Advisory Committee for consideration and action. In 2016, the Advisory Committee chose to appoint one subcommittee: the Public Records Exceptions Subcommittee. The Public Records Exceptions Subcommittee's focus is to review and evaluate public records exceptions as required of the Advisory Committee pursuant to 1 MRSA §433, sub-§2-A. The guidelines in the law require the Advisory Committee to review all public records exceptions enacted after 2004 and before 2013 no later than 2017.

As part of its review, the Subcommittee reached out to state and local bodies for information, comments and suggestions with respect to the relevant public records exceptions administered by that body. All inquiries to the public bodies were coupled with an invitation for a representative of the public body to attend the Subcommittee meeting to provide any additional information or answer questions from the Subcommittee. Review was undertaken in light of the criteria codified at 1 MRSA §434, and, after discussion and a vote, recommendations for either keeping a provision with no modification or otherwise striking or amending the provision were passed along to the full Advisory Committee for a final vote. Representative Monaghan was the chair of the Subcommittee and A.J. Higgins, Mary Ann Lynch, Chris Parr, Linda Pistner, Helen

Rankin and Eric Stout served as members. As a legislator and the Advisory Committee chair, Senator Burns was an ex officio member.

Exceptions reviewed by the Subcommittee in 2015, but considered by the full Advisory Committee in 2016: The following exceptions were reviewed by the Subcommittee at its December 1, 2015 meeting, but were not able to be considered by the full Advisory Committee until 2016. The recommendations are summarized below.

Note: Reference numbers below are based on a spreadsheet of public records exceptions created by staff to facilitate the review. The spreadsheet is available on the Right to Advisory Committee's website, www.maine.gov/legis/opla/righttoknow.htm.)

Ref# 4: 1 M.R.S. §402, Sub-§3, ¶O, relating to personal contact information concerning public employees other than elected officials

The Subcommittee voted 4-0 to recommend no modification.

Ref# 9: 1 M.R.S. §1013, Sub-§2, relating to the identity of a requestor of Commission on Governmental Ethics and Election Practices opinions

The Subcommittee voted 3-0 to recommend no modification. According to the Ethics Commission this exception has not been used in the last 13 years, so they believe the exception is clear. The exception is important due to the sensitive nature of this information.

Ref# 10: 1 M.R.S. §1013, Sub-§4, relating to Commission on Governmental Ethics and Election Practices records other than complaints

The Subcommittee voted 3-0 to recommend no modification.

Ref# 11: 1 M.R.S. §1013, Sub-§3-A, relating to complaint alleging a violation of legislative ethics

The Subcommittee voted 3-0 to recommend no modification.

Ref# 38: 12 MRSA §10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license

The Subcommittee voted to table this item.

Ref# 44: 21-A M.R.S. §1003, Sub-§3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices

The Subcommittee voted 4-0 to recommend no modification.

Ref# 45: 21-A M.R.S. §1125, Sub-§3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet

The Subcommittee voted 4-0 to recommend no modification. The exception involves financial information not ordinarily available to the public.

Ref# 46: 21-A M.R.S. §1125, Sub-§2-B, relating to records of individuals who made Clean Elections gubernatorial seed money contributions over the Internet

The Subcommittee voted 4-0 to indefinitely postpone this item, as a recently passed citizen initiative repeals this provision.

Ref# 47: 21-A M.R.S. §196-A, relating to information contained electronically in the central voter registration system

The Subcommittee voted 4-0 to recommend no modification. A representative of the Department of the Secretary of State appeared before the Subcommittee and explained the need for the continuation of this exception for central voter registration system data. The Department had asked the Legislature for this provision because FOAA is intended to illuminate the activities of government – this data only pertains to personal information of voters. This policy reason still holds today. Releasing this data would raise issues of voter fraud and identity theft. A bill that would narrow this exception is heading to the Veterans and Legal Affairs Committee for the upcoming legislative session.

Ref# 49: 22 M.R.S. §2425, Sub-§8, relating to medical marijuana registry identification cards

The Subcommittee voted 3-0 to recommend no modification.

Ref# 52: 22 M.R.S. §4087-A, Sub-§6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman

The Subcommittee voted 3-0 to recommend no modification.

Ref# 55: 29-A M.R.S. §1301, Sub-§6-A, relating to the social security number of an applicant for a driver's license or non-driver identification card

The Subcommittee voted 3-0 to recommend no modification. The agency survey response indicated concern about a conflict with this exception to the public records covered under FOAA with a provision of Maine's motor vehicle laws that permits disclosure of Social Security Numbers pursuant to the federal Driver Privacy Protection Act, 18 U.S.C. §2721(a)(2). The group discussed this concern and concluded there was no conflict, because the public records exception allows, but does not require, nondisclosure of the SSNs (i.e., they are not designated as "confidential").

Ref# 63: 30-A M.R.S. §4706, Sub-§1, relating to municipal housing authorities

The Subcommittee voted 3-0 to recommend no modification

Ref# 68: 35-A M.R.S. §122, Sub-§1-B, ¶G, relating to information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use in the context of energy infrastructure corridors

The Subcommittee voted 3-0 to recommend no modification

Ref# 69: 35-A M.R.S. §10106, relating to records of the Efficiency Maine Trust and its board

The Subcommittee voted 3-0 to table this item. The Subcommittee received comments from Efficiency Maine Trust that the word “and” at the end of subsection 1, paragraph 3 of this section should instead be an “or.” The Subcommittee was reluctant to make a change without seeing the proposed amendment in formally.

Ref# 70: 36 M.R.S. §6271, Sub-§2, relating to an application, information submitted in support of an application and files and communications in relation to a municipal property tax deferral program for senior citizens

The Subcommittee voted 3-0 to recommend no modification

Ref# 71: 38 M.R.S. §1310-B, Sub-§2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans

The Subcommittee voted 3-0 to recommend no modification

Ref# 72: 38 M.R.S. §580-B, Sub-§11, relating to records held by the Department of Environmental Protection or its agents regarding individual auctions administered under the carbon dioxide cap-and-trade program

The Subcommittee voted 3-0 to recommend no modification

Exceptions reviewed by the Subcommittee in 2016: During 2016, the Public Records Exception Subcommittee held four meetings. The Subcommittee’s recommendation on each exception is summarized below.

Ref# 1: 1 M.R.S. §402, Sub-§2, ¶G, relating to committee meetings pertaining to interscholastic sports

The Subcommittee voted 4-0 to indefinitely postpone this item. The Maine Principals Association responded to the request for information that it is not a public body; the exception also pertains to meetings, not public records. The Subcommittee interpreted the public records exceptions review requirement in the Freedom of Access Act to require only a review of

exceptions to the definition of “public records.” The Subcommittee discussed the possibility of further deliberation on this point with the full Advisory Committee.

Ref# 2: 1 M.R.S. §402, Sub-§3, ¶C-1, relating to communications between a constituent and an elected official

The Subcommittee spent considerable time discussing this exception. Several members expressed support for continuation of the exception with no modifications as it is narrowly tailored to protect private constituent information.

Mr. Parr noted that this is another example of information being designated confidential as opposed to the entire record that contains that information being designated confidential, and that this creates a burden on the agencies and public bodies because of increased time required for searching for and redacting the confidential information. He expressed that this was his general problem with these types of public records exceptions and his being in favor of a broader “records” standard for this confidentiality provision.

After some further discussion in the Subcommittee, Mr. Parr made a motion, seconded by Mr. Stout, that the Subcommittee recommend that this public records exception be amended to apply more broadly to the entire record of constituent communication if it contains any of the types of information listed in the current exception. However, the amendment would also require the agency to provide the record with such information redacted, if it did not constitute an undue burden on the agency. The vote was unanimous of those present. This proposed amendment will be put on the agenda for the next full Advisory Committee meeting.

Sen. Burns stated that it was time for the Legislature to have a better disclaimer to make it clearer to the public that constituent communications with legislators may become public record.

Mr. Stout made another motion, proposing that the subcommittee recommend creating a new public records exception along similar lines to the proposed amendment. The new public records exception would exempt from the definition of “public records” any records containing the information described in 1 M.R.S. §402(3)(C-1)(1) and (2) (e.g., an individual’s medical information, credit or financial information, etc.). Sen. Burns expressed discomfort with applying such a broadly applicable public records exception, and wondered about the unintended consequences of such a change. Rep. Monaghan shared this concern, but stated her support for the motion for the purpose of having a discussion of the proposal in the full Advisory Committee. The vote in favor of the motion was 5-1.

This item was referred to the full Advisory Committee for discussion.

Ref# 6: 1 M.R.S. §402, Sub-§3, ¶Q, relating to security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events for Department of Corrections or county jail

The Subcommittee voted 6-0 to recommend no modification to the current exception.

Ref# 7: 1 M.R.S. §402, Sub-§3, ¶R, relating to social numbers in the possession of the Secretary of State

Robert O'Connell, of the Bureau of Motor Vehicles (BMV) within the Department of the Secretary of the State, assisted the Subcommittee with its review. Mr. O'Connell stated that his agency did not object to the repeal of the exception, given the broader exception for Social Security Numbers in paragraph N of the same subsection of the statute, and also given the confidentiality provision in 29-A MRSA §1301 (Advisory Committee reference number 55) applicable to the Social Security Number of an applicant for a driver's license or non-driver identification card. Mr. O'Connell told the Subcommittee that the Secretary of State's Office will propose draft legislation to amend the confidentiality provision in Title 29-A, section 1301 by eliminating the discretionary sharing of Social Security Numbers as permitted by federal law and instead allowing the sharing of this information only as required by federal law, specifically 18 United States Code, section 2721(b).

Ms. Lynch made a motion to repeal 1 MRSA §402(3)(R). Mr. O'Connell notified the Subcommittee that the BMV, through the Secretary of State would be submitting a bill to accomplish this to the next Legislature, but that his office appreciated the Subcommittee's support. In response, Ms. Lynch modified her motion to recommend repeal of 1 MRSA §402(3)(R) and to endorse the BMV proposed amendment without recommending that the full Advisory Committee put forward any legislation. The motion was seconded by Mr. Stout and the motion carried by a vote of 5-0.

Ref# 13: 5 M.R.S. §1541, Sub-§10-B, relating to internal audit working papers of the State Controller

The Subcommittee discussed this item at more than one meeting in and also sought feedback from the The Office of the State Controller regarding this exception. The office provided a survey response, in which the agency recommended keeping the exception unmodified because it is critical to ensuring that ongoing audits and investigations are not jeopardized and because the protection of confidentiality encourages individuals to provide data and candid information during audits and investigations of their agencies.

The Subcommittee voted 4-0 unanimously to recommend no modification to the current exception.

Ref# 35: 12 M.R.S. §8005, Sub-§1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres

This item was previously tabled in order for staff to solicit stakeholder input. The one stakeholder group that responded stated that it had no problem with the current exception. The Subcommittee voted 6-0 to recommend no modification to the current exception.

Ref# 36: 12 M.R.S. §8005, Sub-§2, relating to Social Security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs

This item was previously tabled in order for staff to solicit stakeholder input. The one stakeholder group that responded stated that it had no problem with the current exception. The Subcommittee voted 6-0 to recommend no modification to the current exception.

Ref# 37: 12 M.R.S. §8005, Sub-§4, relating to forest management information designated confidential by agency furnishing the information

This item was previously tabled in order for staff to solicit input from the stakeholders identified in the Department of Agriculture, Conservation and Forestry's survey response. No recommended changes were received from stakeholders and the agency itself had recommended no changes in its original response.

Mr. Parr objected to this provision on the basis that it was another example of information being designated confidential as opposed to the entire record itself being confidential, creating a burden on the agency or public body to search for and redact such information.

Ms. Lynch made a motion to recommend no modification to the current exception, reasoning that this exception was involving proprietary and competitive information and that the agency had recommended its continuation. The Subcommittee voted 5-0, with one abstention, to recommend no modification to the current exception.

Ref# 38: 12 M.R.S. §10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license

This item was previously tabled in order for staff to gather additional information from the Department of Inland Fisheries and Wildlife regarding how a member of the public signified their wish for the department to keep the individual's email address confidential, whether this was treated as an opt-in or opt-out type of system.

The department provided draft legislation expanding the exception to individual's applying for permits and registrations as well, and designating this information as confidential. Under the proposal, the commissioner would be permitted to allow a member of the public to clearly indicate that the individual's email address not be kept confidential (an opt-in system). The proposal included additional exceptions to the confidentiality to allow the department to disclose these email addresses to a contractor or state agency for marketing or wildlife management purposes.

Mr. Stout explained the origin of the current public records exception, being aware of the agency responding to a FOAA request for all email addresses contained in the department's electronic licensing system for commercial purposes. He noted that the term "contractor" in the proposed exception to the confidentiality requirement should be clarified.

Mr. Parr made a motion, seconded by Sen. Burns, to 1) recommend no modification to the current public records exception and 2) ask the full Advisory Committee to review the department's proposed legislation for possible action. Ms. Lynch expressed her lack of support for the second part of the motion, noting that the proposed legislation would be more appropriately vetted through the Legislature's Inland Fisheries and Wildlife Committee. Sen. Burns agreed and the motion was withdrawn.

Mr. Parr expressed his support for the draft legislation's opt-in approach and broader application, but echoed concerns about allowing the use of this information by contractors. Rep. Monaghan expressed some concern about the patchwork of public records exceptions regarding this type of personal information.

Mr. Parr made a motion, seconded by Ms. Lynch, to recommend no modification to the current public records exception. The motion was amended at the suggestion of Mr. Stout, to send a letter to the Department of Inland Fisheries and Wildlife to relay the Subcommittee's concerns regarding the draft legislation's allowing the department to use otherwise confidential email addresses for marketing purposes without permission. The Subcommittee voted in favor of the motion, 6-0.

Staff reviewed a draft letter to Chandler Woodcock, Commissioner of Inland Fisheries and Wildlife relaying the Subcommittee's decision to recommend no modification to the current exception, but encouraging the Department to submit its proposed legislation to the 128th Legislature. By consensus the Subcommittee approved of the letter.

Ref# 39: 12 M.R.S. §12551-A, Sub-§10, relating to smelt dealers reports, including name, location, gear and catch

This item was previously tabled. Staff reviewed the agency response, recommending no changes to current law. Ms. Lynch moved to recommend no modification, noting that this exception goes to the competitive nature of the fishery.

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 40: 14 M.R.S. §6321-A, Sub-§4, relating to the financial information disclosed in the course of mediation under the foreclosure mediation program

Ms. Lynch spoke to the importance of this confidentiality provision to the process of foreclosure mediation, with much of this information being personal financial information.

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 41: 17-A M.R.S. §1176, Sub-§1, relating to information that pertains to current address or location of crime victims

Mr. Parr made a motion, seconded by Mr. Stout, to recommend no modification to the current exception. The motion carried, 5-0.

Ref# 42: 17-A M.R.S. §1176, Sub-§5, relating to request by crime victim for notice of release of defendant

Mr. Parr made a motion, seconded by Ms. Lynch, to recommend no modification to the current exception. The motion carried, 5-0.

Ref# 50: 22 M.R.S. §1711-C, Sub-§20, ¶N, relating to hospital records concerning an individual's health care information

The Subcommittee spent considerable time and voted 4-0 to recommend repealing this exception, provided the statute was explicitly clear that all other federal laws concerning confidentiality and privacy applied. HealthInfoNet, the custodian of the records subject to this exception, responded to the request for information that it is not a public body subject to FOAA. Staff reviewed case law regarding how to determine if a body is a public body subject to FOAA; the Subcommittee determined that HealthInfoNet is not a public body. Because the exception is inoperative, the Subcommittee recommended its repeal.

Ref# 51: 22 M.R.S. §2153-A, relating to information provided to the Department of Health and Human Services by the U.S. Department of Agriculture and the U.S. Food and Drug Administration that is confidential under federal law

Staff related the Department of Health and Human Services (DHHS) survey response, where the agency had responded that the Department of Agriculture, Conservation and Forestry (ACF) was the custodian of these records because 22 M.R.S. §2153 gives that department the power to promulgate appropriate regulations. ACF provided no response to staff questions.

Mr. Parr noted that this was an example of a specific public records exception for information that is already made confidential under another statute, in this case a federal statute. Ms. Lynch made a motion to recommend no modification to the current exception, but the motion failed. Mr. Parr asked staff to attempt to gather more information from the agencies to determine where the records actually are.

At a subsequent meeting, the Subcommittee discussed this item after asking staff to contact the Department of Agriculture, Conservation and Forestry (DACF) again for feedback regarding which agency is the custodian of these records and, if DACF is the custodian, input on its experience and recommendations with respect to the exception. The agency responded that it did not recommend any changes to the current exception, and that it is important for the agency to follow federal requirements and federal confidentiality agreements with respect to this information.

Staff suggested that the statute could be clarified to indicate that DACF is the official custodian of these records instead of the Department of Health and Human Services. Staff added that,

however, practically speaking, the departments already have an understanding of how the law is administered and neither indicated that the language has caused any problem.

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 54: 25 M.R.S. §4202, relating to records and information connected in any way with the work of a critical incident stress management team for law enforcement personnel

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 55: 29-A M.R.S. §1301, relating to the social security number of an applicant for a driver's license or non-driver identification card

Robert O'Connell, of the Bureau of Motor Vehicles (BMV) within the Department of the Secretary of the State, assisted the Subcommittee with its review. Mr. O'Connell informed the Subcommittee that the Secretary of State's Office has prepared proposed draft legislation that would amend the confidentiality provision in Title 29-A, section 1301 by eliminating the discretionary sharing of Social Security Numbers as permitted by federal law and instead allowing the sharing of this information only as required by federal law, specifically 18 United States Code, section 2721(b).

Mr. O'Connell notified the Subcommittee that the BMV, through the Secretary of State would be submitting a bill to accomplish this to the next Legislature, but that his office appreciated the Subcommittee's support. The Subcommittee recommended by a vote of 5-0 that no change be made to the current exception, but expressed their support for the proposed amendment suggested by the BMV.

Ref# 56: 29-A M.R.S. §2251, sub-§7-A, relating to personally identifying accident report data contained in an accident report database

There was some discussion in the Subcommittee about whether this information should be kept confidential, given that it is potentially important for individuals seeking necessary information about the other party in an automobile accident. During the course of the discussion it was clarified that this exception applied only to bulk data transfers from the accident database, not to requests for individual accident reports. Mr. Stout explained that the provision was originally enacted to limit the information released in bulk data requests from law firms seeking personal information by which to contact potential clients.

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 57: 29-A M.R.S. §2117-A, relating to data collected or retained through the use of an automated license plate recognition system

Mr. Stout explained the current automated license plate recognition system by which license plate data is collected by Turnpike Authority scanners at toll booths and the plate number is

electronically checked against a national database of commercial truck safety violations. Ms. Lynch expressed concern about continuing this public records exception when the Department of Public Safety did not express an opinion on whether it should be retained. Rep. Monaghan expressed concern that the Subcommittee had not heard input from the Department of Transportation, Bureau of Motor Vehicles or truckers associations. Staff agreed to gather input from these entities and report back at the next Subcommittee meeting.

The Subcommittee voted to table discussion on this exception by a vote of 5-0.

Ref# 58: 32 M.R.S. §91-B, sub-§1, relating to quality assurance activities of an emergency medical services quality assurance committee

Subcommittee members expressed concern for the breadth of this confidentiality provision. In particular, there was concern about the confidentiality of the “quality assurance activities” of an emergency medical services quality assurance committee approved by the Emergency Medical Services Board. Members expressed understanding of the need for personally identifiable information to be confidential, but confusion about why the proceedings and activities of this public body should be confidential.

The Subcommittee voted to table discussion on this exception by a vote of 5-0.

Ref# 59: 32 M.R.S. §91-B, sub-§1, ¶A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 60: 32 M.R.S. §91-B, sub-§1, ¶B, relating to information about a person receiving emergency medical services as part of an application for credentialing by Emergency Medical Services Board

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 61: 32 M.R.S. §91-B, sub-§1, ¶C, relating to information submitted to the Emergency Medical Services Board for its statewide trauma-incidence registry under section 87-B

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 62: 32 M.R.S. §91-B, sub-§1, ¶D, relating to examination questions used for credentialing by Emergency Medical Services Board

Ms. Lynch expressed some concern about this provision, noting that the Board of Overseers of the Bar, for example, makes public the bar examination questions from prior years so that those planning to take the exam can better understand the scope of the test and prepare for it. She noted that this confidentiality provision is qualitatively different than the other related provisions

in this section. Ms. Lynch stated that she understood the reason for wanting to protect the questions for upcoming examinations, but not the questions for prior examinations.

The Subcommittee voted to table discussion on this exception by a vote of 5-0.

Ref# 64: Title 34-A, section 11221, subsection 13, relating to disclosure by the Bureau of Investigation and law enforcement agencies of certain sex offender registry information in electronic form

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 65: Title 34-A, section 11221, subsection 9-A, relating to certain sex offender registry information collected by the Bureau of Investigation, including information relating to the identity of persons accessing the sex offender registry

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 66: Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board

Staff related its efforts to gather information about and from the Mental Health Homicide, Suicide and Aggravated Assault Review Board. The only information staff could ascertain was that the Board appears to have been inactive since at least 2011.

Ms. Lynch noted that there is currently a Homicide Review Board that is active. Sen. Burns asked staff to continue seeking information about the Board from the Attorney General's Office, including information about the Board's status and whether its charge is currently being carried out by the Homicide Review Board. Ms. Lynch also suggested following up with Lisa Marchese, Criminal Division Chief of the Attorney General's Office, Cumberland County District Attorney Stephanie Anderson and the National Alliance on Mental Illness (NAMI) in Maine.

The Subcommittee voted to table discussion on this exception by a vote of 5-0.

Ref# 67: Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification

Ms. Lynch noted that these records contained very confidential mental health information used for purposes of firearm background checks.

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 69: Title 35-A, section 10106 relating to records of the Efficiency Maine Trust and its board

This item was previously tabled by the Subcommittee in order to request a proposed amendment from the Executive Director of the Efficiency Maine Trust in writing. Staff reviewed the proposed amendment, which would move the authority to determine whether records of the trust were business sensitive, and therefore confidential, from the board to the director. The amendment also gives authority to the director, as opposed to the board, in making the determination of what information that would be otherwise confidential may be released. According to the Efficiency Maine Trust Executive Director, Michael Stoddard, this change is needed because these decisions must be made quickly, in the ordinary course of business, and are therefore better suited to being made by the executive director than the board, which only meets once per month. Additionally, the amendment would replace an “and” with an “or,” so that any of the criteria for confidential trust records may be present instead of all criteria needing to be met in order for the records to be determined confidential.

The Subcommittee voted 5-0 to amend the current provision with the language submitted by Mr. Stoddard of the Efficiency Maine Trust.

V. COMMITTEE PROCESS

This year, the Right to Know Advisory Committee held five committee meetings, which are summarized below.

Summary of June 22, 2016 meeting

Summary of the Right To Know Advisory Committee duties and powers

Staff reviewed the Advisory Committee’s duties as set forth in Maine’s Freedom of Access Act (FOAA) at 1 MRSA §411, sub-§6.

Summary of actions of the 12th Legislature, Second Regular Session, affecting FOAA: RTKAC recommendations

Staff reviewed the legislative outcome of the recommendations included in the Advisory Committee’s January 2016 report. The 2016 report included proposed legislation regarding remote participation by members of public bodies; in response to Advisory Committee’s recommendation, the Judiciary Committee created LD 1586, “An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings.” A majority of the Judiciary Committee voted “Ought Not to Pass” on LD 1586, however a minority of the Judiciary Committee proposed an amendment that would have required a governmental entity to adopt a written policy governing remote participation by members that also describes how the policy meets the principles of FOAA. The bill and the amendment were not enacted.

The Judiciary Committee considered another remote participation bill, LD 1241, “An Act To Increase Government Efficiency,” which was carried over from the First Regular Session to the Second Regular Session. As finally enacted, LD 1241 permits the board or commission of each of four State bonding authorities (the Maine Governmental Facilities Authority, the Maine Health and Higher Educational Facilities Authority, the Maine State Housing Authority and the Maine

Municipal Bond Bank) to conduct public proceedings with members participating via remote access technology in certain circumstances (i.e., the member is needed for a quorum, illness of the member, weather that makes driving hazardous, or unexpected traffic delays or vehicle breakdowns when the commissioner is traveling to the meeting). LD 1241 was finally enacted as Public Law 2016, chapter 449.

Mr. Parr asked what should be inferred from this legislation regarding what authority is needed in law before a body may allow remote participation by its members at public proceedings. Staff noted that there still seem to be two approaches clarifying remote participation in public meetings: 1) specifying broad authority for remote participation in FOAA itself, and 2) providing specific authority for a governmental entity in its statutes. Staff also noted the Governor's position that remote participation is already permitted under FOAA as long as all FOAA requirements are otherwise met, as stated in the veto message to LD 1809, "An Act Concerning Meetings of Boards of Trustees and Governing Bodies of Quasi-municipal Corporations and Districts That Provide Water, Sewer and Sanitary Services"; that veto was not overridden by the 126th Legislature.

Ms. Goucher stated that she would like to see the Advisory Committee attempt another recommendation in this area, because the issue is not going away until there is some guidance and clarity given. The Advisory Committee did not take a formal action on this request.

*Summary of actions of the 127th Legislature, Second Regular Session, affecting FOAA:
Proposed public records exceptions reviewed by Judiciary Committee*

Staff summarized several bills containing proposed public records exceptions referred from policy committees to the Judiciary Committee for review in the Second Regular Session: LD 466, "An Act To Increase Competition and Ensure a Robust Information and Telecommunications Market," which was referred by the Energy, Utilities and Technology Committee; LD 1467, "An Act Regarding Maine Spirits," which was referred by the Veterans and Legal Affairs Committee; LD 1498, "An Act To Clarify Medicaid Managed Care Ombudsman Services," which was referred by the Health and Human Services Committee; LD 1499, "An Act To Increase the Safety of Social Workers"; LD 1578, "An Act To Update Maine's Solid Waste Management Laws," which was referred by the Environment and Natural Resources Committee;

Review of public records exceptions enacted from 2005- 2012 pursuant to 1 MRSA §433

Staff reviewed the status of the Advisory Committee's review of existing public records exceptions, which the Advisory Committee began last year and is due by 2017. The Public Records Exceptions Review Subcommittee reviewed a number of exceptions after the Advisory Committee's last meeting in 2015 that will be presented for final action by the full committee in 2016. Next year, the Advisory Committee will begin reviewing all existing public records exceptions found in Titles 1 through 7-A. That review will be due by 2019.

Staff provided an update on a potential issue identified in 2015 involving the Department of Education's ability to share teacher disciplinary information with other states because of the

breadth of confidentiality provided at 20-A MRSA §13004, sub-§2-A. In 2015 the Subcommittee recommended to the full Advisory Committee that it draft legislation, with direction from the Department of Education, to address the issue. The Advisory Committee decided not to recommend a change to the statute, and instead notified the Education and Cultural Affairs Committee about this issue and the issue of teacher discipline confidentiality more generally. The Education and Cultural Affairs Committee determined that the Department does not seek to share confidential disciplinary information with other states. It seems this issue is resolved for both the Right to Know Advisory Committee and the Education Committee.

Potential topics and projects for 2016

- *Confidentiality of hazardous material transfer by railroads*

Staff related a request from the Judiciary Committee for the Advisory Committee to include in its public records exceptions review a provision enacted by LD 484 in 2015 and now codified at 1 MRSA §402(3)(U), which makes information held by the Department of Environmental Protection relating to the transfer of hazardous material by railroads confidential. Mr. Pringle moved for the Advisory Committee to take action on this item. The vote was unanimous of those present that the full Advisory Committee discuss the issue.

- *Confidentiality of personal contact information for professions and occupations regulated by the State*

Staff related a request from the Judiciary Committee for the Advisory Committee to develop comprehensive recommendations for the treatment of personal contact information for professions and occupations regulated by the State. In the Second Regular Session of the 127th Legislature, LD 1499 enacted a new confidentiality provision for social worker licensees' and license applicants' addresses and telephone numbers; in connection, the Judiciary Committee sought a uniform policy for all licensing information. Staff noted that some licensing boards do make certain licensee information confidential in statute already. The Advisory Committee discussed how a uniform policy would need to balance the safety interests of the public in having access to licensee information with the privacy interests of licensees and license applicants.

After conversation on the topic, Mr. Parr moved for the full Advisory Committee to take up this topic in its business this year. All present were in agreement except for Mr. Higgins and Ms. Goucher. Mr. Higgins stated that his reluctance was due to concern with how far this would go toward confidentiality, and concern with expanding confidentiality even when licensees are not requesting it. Ms. Goucher stated that her opposition to the vote was because we already have a uniform policy – that these records are public – and any deviation from that requires a group to come before the Legislature to make its case and seek an exception. Mr. Higgins noted that it seemed we are trying to turn current policy on its head. Sen. Burns stated that it would be good for the Judiciary Committee to have guidelines to help in its considerations of future confidentiality proposals in the licensing area. Rep. Monaghan agreed it is important to have a uniform policy as new requests for confidentiality are inevitable. Ms. Pistner stated there were obviously some competing concerns, but expressed that she thought a compromise could be

reached (for example, if a personal phone number is to be confidential, the licensee would have to provide a work number that would be open to the public).

Sen. Burns reiterated that the Judiciary Committee was not looking to change policy, but wanted to establish factors to consider when making decisions about new confidential licensing provisions. He requested staff provide some written material before the next meeting regarding this licensee confidentiality topic.

- *FOAA assistance for indigent members of the public*

The Advisory Committee next considered the request of Ken Capron for the development of a mechanism to help provide funds for indigent complainants to bring forward FOAA cases and the possibility of developing a standard court form to help pro se indigent complainants. The Advisory Committee took no action on this topic.

- *FOAA agency time and cost estimates, fee waiver policies and remedies for requesters*

Jack Comart of Maine Equal Justice Partners emailed the group in April with 5 suggestions: 1) require agencies to provide an estimate of time and cost for each separate component of a request for information; 2) require agencies to publically post and make available their fee waiver policy; 3) require that agencies grant fee waiver requests based upon reasonable standards; 4) clarify when estimates of time and cost must be provided by the agency; and 5) provide some recourse for requesters of information for agency action that may be arbitrary or capricious.

Staff reviewed current agency FOAA response time requirements, and also noted that while FOAA allows an agency to waive fees under FOAA, there is no requirement that the agency have a fee waiver policy or publicly post such policy. The Advisory Committee took no action on this topic.

Discussion of any additional topics and projects for 2016

Sen. Burns gave the group notice that there would be an agenda item relating to a potential issue involving executive sessions for the Committee's consideration at the next meeting. The discussion was opened up to the group regarding any other items of concern for potential consideration this year.

- *Criminal History Record Information Act (CHRIA) and the Judicial Branch*

Ms. Meyer raised a possible topic for future Advisory Committee discussion regarding the Judicial Branch's recent reversal of an October decision to make case files for dismissed cases confidential within 30 days of judgement. The prior policy had been based on an interpretation of the Criminal History Record Information Act (CHRIA) and an administrative order, which the media challenged. There may be a need to clarify some statutory ambiguity. Ms. Meyer suggested that this discussion should not happen without Ms. Lynch from the Court System being present. Sen. Burns moved to include this item in the next agenda and it was agreed by unanimous consent.

- *Social Security Numbers in medical files held by the Dept. of Health and Human Services*

Ms. Morgan asked if former Rep. Bradley Moulton could address the group about a concern he had based on his dealings with the Department of Health and Human Services in his capacity as a private attorney; Sen. Burns welcomed Rep. Moulton to the microphone.

Rep. Moulton explained that those who bring complaints before the medical boards make their records public information. His client had to file FOAA requests with the Department of Health and Human Services to access her medical review records. His and his client's chief concern was that these records included his client's social security number, and that this sensitive information was being treated as a public record. The Advisory Committee took no action on this topic.

- *Warden's Service FOAA requests*

Rep. Monaghan asked to discuss the issue of the Warden's Service FOAA requests about which the Advisory Committee had been asked to hold a public meeting. Sen. Burns gave the Advisory Committee an update, stating that he, Rep. Monaghan, the Presiding Officers of the Legislature and a representative of the Attorney General's Office were to have a meeting later that day to discuss the best way to proceed. Mr. Higgins moved to include an agenda item for the next meeting to discuss the outcome of this meeting; it was agreed by unanimous consent.

Discussion of Subcommittees

The Advisory Committee agreed that there would one Subcommittee--Public Records Exceptions Review Subcommittee. Sen. Burns, Rep. Monaghan, Ms. Pistner, Ms. Lynch will continue to serve as members with the addition of Mr. Stout and Mr. Parr this year.

Summary of July 20, 2016 meeting

Hazardous material transported by railroads

Staff reviewed the request from the Legislature's Judiciary Committee to examine the public records exception to Maine's Freedom of Access Act (FOAA) recently enacted in LD 484 (Public Law 2015, chapter 161), relating to hazardous material transported by railroads. Staff reviewed the packet of documents provided to the Advisory Committee, including the statutory criteria for review of public records exceptions and information supplied by the Department of Environmental Protection regarding this public records exception in response to a survey questionnaire sent by staff.

Mr. Parr noted that the intent of the exception seems aimed at preventing acts of terrorism, but that there are already a number of other FOAA exceptions for sensitive information related to potential terrorist attacks. For example, 1 MRSA §402(3)(L) is an exception for records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, and Title 16 would seem to provide alternate means of protecting this kind of information as well. Mr. Parr asked staff if these

exceptions were taken into account in the Judiciary Committee's deliberations on this exception. Staff replied that the Committee was aware of the existing security plan exception. This new exception may go beyond that. Railroad companies were concerned that this preexisting security plan exception was not adequate to protect the records they were concerned with. It was noted that the Judiciary Committee never received any testimony on the bill with concerns about these records not being public.

Rep. Monaghan, who is also a member of the Judiciary Committee, did not recall if a side-by-side comparison of similar state laws had been provided during the Judiciary Committee's consideration of the bill. Staff replied that the only comparable state law provided to that committee was a Massachusetts law that was broad enough to cover hazardous material shipped by rail; this law is not specific to railroads, unlike the Maine law.

The Advisory Committee discussed whether the Judiciary Committee had reviewed the bill against the criteria in 1 MRSA §432(2) as the Judiciary Committee typically does, and whether there has been any change in circumstances relative to the criteria for this exception since that Committee's original review. Although members of the Judiciary Committee believed they had reviewed the proposed exception in light of the statutory criteria, the review had not been documented with a review checklist. Staff and Advisory Committee members noted that there does not appear to have been any changes in circumstances, for example in federal law, since the bill was passed, except for increased public interest likely generated by media reports.

Mr. Pringle noted that the current language of the exception is broad and causes the Department of Environmental Protection (DEP) to wonder to what extent the exception applies to their records. He also remarked that it seemed odd that Maine citizens should know nothing about hazardous material transported across the state and expressed concern with the sheer number of materials covered by this broad exception – the “hazardous material” definition comprises approximately 200 pages in federal regulations – and suggested that at least some of these materials probably don't need to be kept confidential.

The Advisory Committee discussed the issue of the broad “hazardous material” definition, and the best way to determine how to narrow it, if at all. There was doubt expressed about whether this may be an issue any more, since the DEP has recently resumed releasing summaries of rail shipments of crude oil, albeit after the date of shipment.

Ms. Pistner noted that there are several issues involved with this topic: how to address the public concern that has arisen since the bill's enactment; whether the problem is fixed now that the DEP is providing a summary list of railroad crude oil shipments; whether the scope of hazardous materials should be narrowed in the exception; and finally, if the summary DEP is currently releasing should be required by statute.

In response to the Advisory Committee's discussion, staff noted that related issues that may need to be resolved are whether the public have access to this information, whether there is a need to make more information public than DEP is currently releasing in its post-shipment summaries, and whether DEP has concerns with the current statutory language.

Mr. Parr introduced the idea of sending a letter to the Judiciary Committee recommending that it revisit this topic, potentially narrowing the scope of the exception and providing the public another opportunity to comment on the provision. Sen. Burns added that the letter should request that the Committee create a committee bill as a vehicle for this reconsideration.

Peggy Reinsch, nonpartisan staff for the Judiciary Committee and former staff for the Advisory Committee, addressed the committee at the chair's invitation. She offered that it would be helpful for the Judiciary Committee if the Advisory Committee's letter outlined exactly what the questions or issues are.

The Advisory Committee decided to go through the checklist of public records exception review criteria (1 MRSA §432(2)) to better focus its request to the Judiciary Committee. The group highlighted the areas of greatest concern, including: paragraph G – whether public disclosure jeopardizes the public and if so, whether that safety interest substantially outweighs the public interest in the disclosure of the records; paragraph H – whether the proposed exception is as narrowly tailored as possible; and paragraph E – whether the public disclosure puts a business at a competitive disadvantage and, if so, whether that interest substantially outweighs the public interest in the disclosure of records.

Advisory Committee members also voiced concern about whether the information should only be made available retrospectively, or whether the public should have a right to the information prospectively.

On Mr. Parr's motion, and Ms. Goucher's second, the group unanimously approved sending a letter to the Judiciary Committee on this issue. Staff agreed to draft the letter, outlining the issues raised by the Advisory Committee, for review at the next meeting.

Personal contact information for professions and occupations licensed by the State

Staff reviewed the background documents provided to the Advisory Committee, including the recently enacted bill providing a public records exception for the addresses and telephone numbers of licensees and license applicants in the possession of the State Board of Social Worker Licensure. Staff also reviewed a list of occupations and professions licensed in Maine. Staff informed the group that in terms of licensing information, generally the protected information is an individual's Social Security Number, unless a specific law is enacted to protect particular information for a particular licensing category.

Mr. Pringle mentioned the example of nurses, physicians and osteopaths, where there is a separation of personal private information on licensees from the public information, and wondered how well this has worked in practice. Staff replied they would need to reach out for further information, but shared a letter submitted by Planned Parenthood to the Advisory Committee stating that information about licensees that is supposed to be private was released to the public in response to at least one FOAA request.

The Chair invited Nicole Clegg, Vice President of Public Policy for Planned Parenthood of Northern New England, to comment. Ms. Clegg related her organization's experience with

FOAA requests to the State Board of Nursing. Ms. Clegg stated that although the Board's redaction of non-public, personal information has gotten better, there is still a significant amount of information released, including photographs of licensed nurses, in response to anonymous email requests for public records. The release of this information in this manner is distressing to employees of Planned Parenthood.

Mr. Parr noted that the Advisory Committee has previously discussed whether anonymous FOAA requests should be permitted. He noted that the purpose of FOAA is to provide the public information about what the government does. He asked Ms. Clegg whether she saw any value in sharing this amount of information to the public under FOAA. Ms. Clegg replied that she struggled to find a reason that the public should have a right to know this amount of information about a private citizen.

Ms. Pistner noted the tension between the safety and privacy of licensees with the public need to know who is actually licensed, and asked Ms. Clegg to clarify the scope of her request for increased privacy. Ms. Clegg acknowledged the public interest, but iterated that she didn't see the need for the public to have access to the entire license application file – the wealth of information available to the public is significant, even if the applicant's address is redacted.

Ms. Meyer mentioned recent legislation limiting the scope of the Maine Human Rights Commission's investigation records that would be subject to FOAA requests, noting that the compromise struck by this exception could be a useful model. Sen. Burns noted it would be helpful to have more information on this, to inform the group's efforts in finding the balance between public and private information.

Mr. LaHaye questioned the propriety of anonymous FOAA requests. Mr. Parr weighed in, noting his belief that when citizens are required to provide private personal information to government, the government has a duty to safeguard that information, except when release of the information furthers the underlying purpose of FOAA. Mr. Parr offered that an opt-in or opt-out system might be one model to look at in trying to strike the appropriate balance.

Mr. Stout shared his familiarity with the federal Privacy Act, which acts to counterbalance the federal Freedom of Information Act. Under the federal system, personally identifiable information (PII) is only permitted to be collected and used for certain purposes, and is not permitted to be publicly disclosed.

Ms. Clegg of Planned Parenthood noted that the Maine Gambling Control Board protections for PII are a good example. Mr. Pringle suggested using as a template the exceptions we already have, for example the protections around public employee personal information, and looking at what information the public really should know about a person licensed by the State.

Anne Head, Commissioner of the Department of Professional and Financial Regulation, was invited to address the group. Commissioner Head acknowledged that the Advisory Committee was faced with an interesting and tough decision involving personal privacy interests and public oversight of agency actions. She reminded the Advisory Committee that licensees put their information on record with agencies in order to receive permission from the State to do certain

things. However, she also recognized that while there is a need for public oversight over government decision making, there may be legitimate personal safety and privacy interests that can be served through some middle ground. She then encouraged the Committee to consider what they are trying to achieve with this potential change. Mr. Parr asked if the group could focus its work on protecting certain classes of personal information. Comm. Head answered in the affirmative and noted that there may be more information collected by boards and agencies than is necessary for licensing purposes: agencies have a responsibility not to over-collect.

Staff agreed to put together templates of examples of personal information that is currently protected.

Ms. Pistner noted that the public needs access to licensing information to make sure the Board acting appropriately. For example, access to this information allows the public to know the basis for the grant or denial of a license application. However, access to this information can also be abused, she noted.

Sen. Burns remarked that this was a balancing act, but the bottom line should be protecting people's safety. Just because one seeks a professional license does not mean the person needs to put his or her life in danger. He also voiced support for developing a uniform policy for the treatment of licensing information.

Mr. Parr made a motion, seconded by Mr. LaHaye, that the group look at existing examples of policies and law that focus on personal contact information to develop a uniform policy regarding personal information in licensing records.

Rep. Monaghan stated that before individuals provide their information for licensure, there should be a disclosure from the agency as to what portion of that information will be public and what will be kept private.

Ms. Meyer noted that the Planned Parenthood letter was disturbing, but the flip side is that making PII available to the public can protect the public in ways that are more beneficial than protecting a particular licensee. For example, having access to a plumber's home address can allow members of the public to determine if he or she is a registered sex offender. Mr. Shorey stated his view that too much licensing information is publicly available, that the availability of that information can cause harm, and that it is time the group tried to do something to protect some of that information, even if the proposed solution isn't right the first time. Ms. Goucher opined that with modern technology, and Google searches, the public already has access to an incredible amount of personal information – keeping government records confidential is only putting a finger in the dike. Sen. Burns agreed that private information was readily available with modern technology, but stated that people place a lot of trust in government and expect a certain level of prudence and accountability.

The group agreed to place this item on the next meeting agenda. The Committee asked Planned Parenthood to reach out to its national organization for additional policy guidance. Advisory Committee staff agreed to search for examples from other states of protections for personal

information in licensing records. The committee voted unanimously in favor of this course of action.

Maine Warden Service FOAA requests; Advisory Committee request to Colin Woodard and Sigmund Schutz for input and suggestions for changes in policy or law

Staff reviewed correspondence provided to the Advisory Committee regarding the ongoing dispute between the Portland Press Herald/Maine Sunday Telegram and the Maine Warden Service over the agency's response to the paper's FOAA requests. This included a letter dated June 24th from Sen. Burns and Rep. Monaghan to Colin Woodard of the Portland Press Herald and the paper's attorney, Sigmund Schutz. The letter stated that despite recent requests for a public hearing regarding the issues between the paper and the agency, the Advisory Committee was not a fact-finder or arbitrator of disputes and was better suited to discussing and considering policy solutions to problems concerning access to public records. Accordingly, the letter invited input or suggestions for changes in policy or law based on the paper's recent experiences with the Maine Warden Service.

The Advisory Committee was copied on a July 1st letter from Mr. Schutz to the Warden Service and the Attorney General's Office summarizing the paper's dissatisfaction with the agency response as being untimely and incomplete, as well as conditioned on an unreasonable fee.

The Warden Service responded to Mr. Schutz's letter on July 15, and copied Advisory Committee staff. This letter disputes the characterization of the agency's response.

On July 18th, Mr. Schutz responded to the Sen. Burns and Rep. Monaghan request letter on behalf of the paper, declining to offer suggestions for changes in the law because the paper does not engage in legislative advocacy. The letter noted that if the Advisory Committee focuses only on changes in the law, it may overlook related issues of compliance with and enforcement of current law.

Sen. Burns recapped the meeting that he, Rep. Monaghan, the Presiding Officers of the Legislature and the Office of the Attorney General had after the last Advisory Committee's meeting, at which it was decided that Sen Burns and Rep. Monaghan would send the June 24th letter.

Rep. Monaghan suggested that the Advisory Committee should have a discussion about State agencies' compliance with FOAA to prevent similar disputes from arising again. Sen. Burns disagreed, noting that the law enables aggrieved parties to use the Superior Court to force compliance. Ms. Pistner pointed to the "10 Factors for Estimating Time" document Eric Stout had put together as a helpful development for understanding agencies' response time. Also, she pointed to upcoming training for agencies presented by Brenda Kielty, the Public Access Ombudsman.

Ms. Kielty was invited to address the group. She discussed an upcoming training she is providing for all Executive Branch agency public access officers. This will be the first time all agency public access officers will receive training at the same time. The format will be a round

table discussion, focused on two topics: 1) providing a cost estimate for FOAA responses, and 2) conducting searches. Regarding the cost estimate, she noted that it is not an easy determination. She worked with Mr. Stout to develop standards to apply to the estimate process, and finds the rubric developed by Mr. Stout as a helpful way for agencies to approach the estimate process. Regarding the search topic, Ms. Kielty noted that FOAA doesn't tell an agency how to search for documents and there is currently no common methodology for searching electronic records, specifically emails. After the training, Ms. Kielty plans to continue dialogue with the public access officers. Ms. Kielty agreed to attend the next meeting and present a preliminary Public Access Ombudsman report as well as an update after the public access officer training.

Ms. Meyer raised the idea of the Advisory Committee having a public hearing, not to delve into the specifics of any dispute, but to look at the bigger picture of how FOAA is working for the public. She noted that the Advisory Committee has been around for 10 years and has not held a public hearing yet. The Advisory Committee discussed this notion of a public hearing, and how it might work. Members raised questions about what the Advisory Committee would seek to do with the information gained from the public hearing, how the meeting would be run in order to elicit the most useful testimony and concerns that the viewpoint of agencies may not be fairly represented. Ms. Kielty weighed in that the idea of the public providing input on FOAA in the larger sense is very timely. FOAA is a dynamic statute and this would be a valuable opportunity to hear how it is working. Ms. Kielty also offered the idea of a summit format, where specific parties would be invited to provide input to help the focus be more clearly on ways to improve the law and less on the details of individual cases. The Advisory Committee favored providing broader public input.

Sen. Burns offered that before the next meeting the chairs would seek input from the Attorney General's Office and the Director of the Office of Program Evaluation and Government Accountability, Beth Ashcroft, for additional ideas about organizing the public hearing. Discussion on a potential public hearing will be added to the next meeting's agenda. This discussion will be held after the feedback from Ms. Kielty on the results and agency perspectives from her public access officer training.

Review subcommittee recommendations relating to existing public records exceptions enacted from 2005- 2012, pursuant to 1 MRSA §433

Staff presented the recommendations of the Public Records Exceptions Review Subcommittee from its December 2015 meeting. The Advisory Committee tentatively agreed to support the recommendations of the Subcommittee, but reserved the opportunity to raise any questions or concerns at the next meeting.

Potential topic for future discussion- Consider legislation requiring local boards and committees to record their executive sessions and to preserve these records so that they may be legally discoverable if there is a later dispute about either the content or propriety of the discussion held during these sessions

Mr. Pringle expressed doubt about taking up this topic given the amount of business already before the Advisory Committee and because this is an issue that largely arises in the municipal

context but there is no municipal interest representative yet appointed to the Advisory Committee to provide that municipal perspective. The municipal interest member should be seated before the Advisory Committee takes up this issue. Mr. Pringle suggested checking on the status of this appointment.

Ms. Pistner pointed out that besides checking on the status of the municipal member of the Advisory Committee, the group should be sure to give adequate public notice to municipal interests so that they may attend and provide feedback.

The Advisory Committee decided that this topic would be tabled until the next meeting, at which staff will present information on the statutory requirements around meeting minutes and executive sessions. Sen. Burns will formally encourage the appointment of the municipal member of the Advisory Committee.

Review of 10 factors for estimating time to respond to a request under the Freedom of Access Act suggested by Eric Stout

Mr. Stout gave a brief presentation to the group on his document, "Freedom of Access Act (FOAA) Email Searches: 10 Factors for Estimating Time."

Mr. Stout began with a FOAA request metaphor: When one goes to the mechanic to get an estimate for repairs to a broken automobile, it is difficult for the mechanic without first lifting up the hood and taking a look at the engine.

Mr. Stout relayed his experience assisting agencies with searches, noting that requestors usually believe the search is going to be easier and cheaper than it ends up being. He also noted the amount of difficulty for agencies to put together a good faith estimate, owed largely to the agencies not knowing from the beginning what the volume of search results will be. At the current time, it is necessary to search each individual State employee's email account. In the future, the current email system may be replaced with an email system that has an "immutable archive" that can be searched centrally. A computer is fast, but a computer can't tell whether search results returned are really relevant to a FOAA requestor's request – this takes staff time to search through the initially returned records. Mr. Stout emphasized the importance of establishing a relationship of trust between the agency and the requestor and maintaining a conversation between the parties to be sure that the agency is spending its time producing the records the requestor is truly seeking.

Maine Center for Disease Control and Prevention

Although not on the agenda, Ms. Meyer raised an issue about a recent Maine Center for Disease Control and Prevention rulemaking that would create new public records exceptions from FOAA, rendering information about disease outbreaks not public records unless they affected more than 2,000 people. She wondered how this could be accomplished in rulemaking. Staff agreed to look further into the issue for the group.

Anonymous FOAA requests

A topic that briefly arose earlier in the meeting was revisited by Mr. Parr, who inquired whether there was any interest by the Advisory Committee in taking up the topic at its next meeting. This would include a discussion of the extent to which, if at all, an agency can ask for the purpose of a FOIA requestor's request. Staff will provide more information on this topic, and will provide documents by email prior to the group's next meeting.

Summary of August 17, 2016 meeting

Hazardous material transported by railroads

Staff discussed a draft letter from the Advisory Committee to the Legislature's Judiciary Committee, in response to the Judiciary Committee's request for the committee to review the public records exception at 1 MRSA §402, sub-§3, ¶U. The Advisory Committee's letter recommends that the Judiciary Committee consider submitting a committee bill to the Legislature so that the current exception may be fully vetted by the Legislature in a manner that allows the most meaningful participation from stakeholders and other members of the public, and from state and local government entities. The letter iterates the Advisory Committee's interpretation of the current law, that it is not intended to prevent public access to summary or aggregate information about the transportation of hazardous materials by rail in the State, particularly crude oil, or to prohibit disclosure of information about spills or accidental discharge of hazardous materials.

The Advisory Committee laid out a number of questions and concerns that may help guide the Judiciary Committee's formation of a committee bill, including whether disclosure of the information sufficiently jeopardizes public safety to outweigh the public interest in disclosure, whether disclosure disadvantages a business interest sufficiently to outweigh the public interest in disclosure and whether the language of the current exception is as narrowly tailored as possible.

After the summary, Mr. Pringle made a motion, seconded by Mr. Parr, to send the letter as written to the Judiciary Committee. Mr. Stout pointed out that the federal regulations cited in this public records exception for the definition of "hazardous materials" do not point directly to the 150-plus pages of materials in 49 Code of Federal Regulations § 172.101, which should be clarified. He also wanted mention of the extensive record keeping and retention requirements in Part 172 of the federal regulations. The motion was amended to include Mr. Stout's suggested change and was voted unanimously.

Personal contact information for professions and occupations licensed by the State

Staff summarized their research into examples of models that could guide the formation of policy recommendations for a more consistent approach to adding protections for the personal information of professional and occupation licensees and license applicants. Research was condensed into a chart distributed to the Advisory Committee, and Staff reviewed this document outlining examples of policy options. The examples drew from various public records exceptions from Maine law, e.g., those protecting the residential address and telephone numbers

of emergency medical services, nursing, osteopathic and medicine licensees and applicants when professional contact information has been provided. Examples from other states were also included in the document, including personal information protections for licensees in California, Indiana, Missouri and North Dakota.

Staff provided information on LD 1171 from the 127th Legislature. At the last meeting, a member had pointed to the amended version of this bill as providing an example of a reasonable compromise between privacy interests of individuals and the public interest of the public. This bill dealt with the confidentiality of the investigative records of the Maine Human Rights Commission, and the majority amendment of the Judiciary Committee would have designated certain information confidential, including medical records, the identity of a minor, personnel records, personal telephone numbers and home addresses.

The Advisory Committee invited up Nicole Clegg, Vice President of Public Policy for Planned Parenthood of Northern New England. Ms. Clegg, who had been asked by the Committee for more information at its prior meeting, distributed a number of handouts: a memo from Planned Parenthood, a report from the National Abortion Federation on violence and disruption against abortion providers, a statement filed in Superior Court in the State of Washington by the National Director for Affiliate Security at Planned Parenthood Federation of America outlining the history of violence and harassment against abortion providers and abortion-providing facilities, and a copy of Maryland law (MD Code, General Provisions, §4-333) making all licensing records confidential except for certain specified categories of information.

Ms. Clegg reiterated that the only non-public information in Maine licensing records is an individual's Social Security Number. She pointed out that even a licensee's federal Drug Enforcement Administration (DEA) drug authorization card is released pursuant to public records request, creating a security risk in itself. She noted that sometimes home addresses are redacted.

Mr. Pringle expressed his view that it would be better to say what isn't public than to specify what is public. Otherwise, he noted, the Advisory Committee would have to look through entire licensing files deciding what was useful to the public and what should be confidential. He stated his belief that home address, home phone and fax numbers and personal cellphone numbers should be confidential. He opined that 1 MRSA §402(3)(O) should be used as a starting place for designating what should be designated confidential in licensing records. Mr. Parr suggested an opt-in type of system, where certain licensing information would be confidential unless the subject of the records affirmatively allowed public disclosure.

Ms. Pistner voiced concern that increased agency costs to redact new categories of information in licensing records would create a fiscal note, likely dooming any bill seeking this increased confidentiality. To reduce agency time and costs, Ms. Pistner suggested perhaps developing a certain document containing information most valuable to the public that did not include private information, and then making that document a public record while the rest of the licensing files would be confidential. Mr. Parr reminded the Committee that there were other categories of licenses regulated by other departments, including 3 by the Department of Public Safety.

Ms. Clegg from Planned Parenthood asked the Advisory Committee to consider a notification system that would notify licensees if their file was requested by a member of the public.

Ms. Meyer, Rep. Monaghan and other Committee members noted that the Committee should keep in mind that there are many categories of licenses other than those commonly subject to harassment as illustrated by Planned Parenthood, expressing hesitancy at applying the same level of confidentiality to all license categories. Mr. Higgins, Ms. Meyer and Ms. Morgan variously expressed the idea that in general, the more the public knows about licensees the better, except in certain circumstances of concern, and that it was important that the public be able to verify the address of a licensee. Several members voiced support for the earlier idea of a form that would be public that contained certain licensee contact information as a solution to the potential harassment issues facing certain licensees.

Mr. Parr asked staff to review what the original request from the Judiciary Committee was on this topic. Staff replied that the Advisory Committee had been asked to develop guidance to assist the Judiciary Committee when it considered proposed confidentiality provisions for licensing information. Sen. Burns stated that the clearer the guidelines, the better, and that the Advisory Committee should err on the side of transparency.

Ms. Clegg from Planned Parenthood suggested that photographs and DEA authorization cards be kept confidential. She noted that DEA cards contain the licensee's name, address, drugs that can be prescribed, date of card issue, expiration date and DEA number.

Ms. Lynch expressed interest in communicating to other license categories to see if there were other concerns with DEA authorization information being released as public records.

Mr. Parr made a motion, seconded by Mr. Pringle, that the Advisory Committee send a letter to the Judiciary Committee with guidance for considering proposed confidentiality provisions applicable to licensing records. The letter would support the general principle that personal contact information should not be public, similar to the criteria at 1 MRSA §402(3)(O) for protecting public employee personal information, except for cases in which the licensee or license applicant has only provided a personal address and not a public business address. Licensees and license applicants must either be presented with an opt-in approach to personal contact information disclosure, or else the regulating body should have a form that would be public but would exclude non-public private information about the individual.

The Committee voted in favor of the motion, 11-2.

Public Access Ombudsman update & recap of Public Access Officer training

Brenda Kielty, Public Access Ombudsman, addressed the Advisory Committee, beginning with a summary of the preliminary report distributed to members. Ms. Kielty noted that the upward trend for number of contacts from the public since 2013 has continued. Of the contacts, most are inquiries about Maine's Freedom of Access Act (FOAA) as opposed to complaints. When she receives suggestions for FOAA improvements, which happens seldom, she said that she refers

these suggestions on to the Advisory Committee. Most contacts, she noted, are from private citizens as opposed to government officials.

Ms. Kielty suggested that issues of perceived delay in FOAA response time by public bodies is often due to the expectations of the public requestors not aligning with reality. Executive sessions seem to create the most FOAA inquiries and complaints. Another popular topic is what constitutes a public meeting, especially in the context of remote participation.

Mr. LaHaye asked if Ms. Kielty contacts an agency when a member of the public complains about the agency. She replied that her goal is conflict resolution, and her intervention all depends on the particular case. She may encourage the requestor to work with the agency, as her intervention may sometimes escalate a conflict.

Ms. Kielty next discussed the recent Public Access Officer training she had given. The focus of the training was on the process of searching for records. She noted that this is an area in which FOAA is silent, and that searches for electronic records are much different than searches for paper record. The procedure begins with proper record retention, actually searching the records, assembling the records, reviewing the records and finally providing access to the requestor. Ms. Kielty noted that Advisory Committee member Mr. Stout provided assistance with the email search portion of the training, which will be offered to each State agency as a follow-on to the initial group meeting.

Ms. Meyer asked if this information was also being provided to the Maine Municipal Association and the Maine School Management Association, and Ms. Kielty replied that she does do outreach to those organizations and will continue to do so. The information from the training will need to be customized somewhat to better address the needs of the other public bodies which these organizations represent.

Sen. Burns asked about records retention training, to which Ms. Kielty replied that the Maine State Archives provides such training. She acknowledged that more can be done in the area of records retention, and must be done.

Right to Know Advisory Committee public hearing

Staff distributed and reviewed the draft public hearing notice for the potential upcoming Advisory Committee public hearing about how FOAA is working and how it might be improved. Staff pointed out that the notice specifically states that the hearing is not a forum for the resolution of specific complaints about meetings or records.

Mr. Higgins wondered if the Advisory Committee or specific members had received any requests from the public to hold a public hearing. Several members noted that they had. Ms. Lynch noted that government officials are feeling some FOAA requests are burdensome and she expect to hear from these officials who bear the burden of responding to FOAA requests as well as from members of the general public.

Ms. Lynch suggested that staff be ready to take up the Advisory Committee's normal business in case there is little testimony provided at the public hearing.

Mr. LaHaye made a motion, seconded by Ms. Lynch, that the public hearing be held, set for September 14th. Sen. Burns added that the public hearing should take place at 1:00 p.m. while the subcommittee could meet at 10:00 a.m. The vote was unanimous.

Subcommittee recommendations relating to review of existing public records exceptions enacted from 2005- 2012, pursuant to 1 MRSA §433

Staff presented the recommendations of the Public Records Exceptions Review Subcommittee, including recommendations from its December 2015 meeting and its July 20th meeting. The Committee approved of the Subcommittee's recommendations in all instances, except for the following.

With respect to the public records exception at 1 MRSA §402(3)(R) (Advisory Committee reference number 7), relating to Social Security numbers in possession of the Secretary of State, the Advisory Committee moved to set aside the item until further information could be gathered from the Secretary of State's Office by staff regarding why this public records exception was needed given that paragraph N of the same statute already exempts all Social Security Numbers from the definition of public records under FOAA.

Regarding 22 MRSA §1711-C(20) (Advisory Committee reference number 50), relating to the names and other identifying information of individuals in a state-designated statewide health information exchange, the Advisory Committee hesitated to take the recommendation of the subcommittee to repeal the provision. Staff provided an explanation of Maine's statewide health information exchange, which serves as a hub for connecting healthcare providers with electronic patient medical records from participating healthcare providers. HealthInfoNet is the state-designated organization managing this exchange. Staff relayed that through contacts with this organization they had expressed the belief that this public records exception had no effect because they were not a public body that falls within the requirements of FOAA. Additionally, HealthInfoNet communicated that it had never received a request for information from the public and saw no value in maintaining this public records exception. Staff offered that according to the criteria currently used by the Maine Supreme Court to determine whether an organization is a public body subject to FOAA, HealthInfoNet would very likely not be considered subject to FOAA. This organization is a private non-profit company established independently from any State action, the organization does not receive State funding and the State have any involvement or control over the exchange besides imposing certain security and confidentiality provisions. Staff offered that HealthInfoNet as a health information exchange is covered by two federal confidentiality laws, the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act.

Mr. Pringle expressed his concern about repealing this provision, citing the law of unintended consequences. Other members echoed this concern over unintended consequences and being uncomfortable with repealing the provision unless it was certain that this information could never be released under FOAA. Several members were of a contrary position, taking the view

that if the public records exception was not needed then it should be eliminated. The Advisory Committee voted to table this item and staff agreed to gather further information.

With respect to the public records exception found at 29-A MRSA §1301 (Advisory Committee reference number 55), relating to the social security number of an applicant for a driver's license or non-driver identification card, this provision is similar to the other tabled item relating to Social Security Numbers in the possession of the Secretary of State. The Advisory Committee voted to also table this item in order for staff to get further information from the Secretary of State's Office.

Proposal to require local boards and committees to record and retain the recordings of executive sessions

Staff reviewed current Maine law regarding open meetings and executive sessions, 1 MRSA §§403, 405, 407. Staff pointed out additionally that the Maine Supreme Court has held that when the propriety of an executive session is challenged, the burden is on the public body to establish that the executive session was proper.

The Advisory Committee invited Rep. Hubbell to explain his proposal. Rep. Hubbell's described his proposal, which is to require local boards and committees to record executive sessions and preserve those records so that they may be legally discoverable in case of a dispute about the content or propriety of the discussion held during these executive sessions. Rep. Hubbell then suggested the Advisory Committee hear from his constituent, Robert Garland, former Town Councilor for Bar Harbor, who had brought the issue to his attention. The Advisory Committee then invited up Mr. Garland, who explained his experience with executive sessions and a personnel matter in Bar Harbor. During litigation involving the matter, Mr. Garland noted that what had transpired during the executive sessions was recalled much differently than how he had remembered it.

Mr. Higgins asked if an attorney can be present during an executive session and whether they can request that a transcript be made. Mr. Pringle addressed the question, stating that an individual who is the subject of an executive session has the right to request to be present, have their attorney present and can request that the meeting be public. This also includes the right to have a court reporter be present to take a transcript of the proceeding, he said. Mr. Higgins asked if the transcript would then be considered a public record, to which Mr. Pringle replied that it would not be, as it would be in the possession of that person and their attorney, though it could always be released at the prerogative of that individual.

Mr. Pringle acknowledged the concern prompting the proposal, but stated that he would be extremely reluctant to have executive sessions recorded. He stated that in his view, coming from his experience in the school board context, the administrative burden of recording and indefinitely keeping these recordings and ensuring their confidentiality into perpetuity outweighed the potential for abuse of executive sessions. He reiterated that the courts place the burden on the agency or public body holding an executive session to justify the propriety of that executive session if there is a legal challenge. A judge would make the determination regarding truthfulness and reliability of participants' recollections.

The Advisory Committee invited up a representative from the Maine Municipal Association, Garrett Corbin, to provide a municipal perspective on the issue. Mr. Corbin posited that it is important to balance the law so that the public interest does not outweigh privacy interests. This proposal, he noted, would discriminate against municipalities and local government in a way that is not done elsewhere in FOAA. He referred to the portion of the executive session statute that details what constitutes proper subject matter for an executive session, 1 MRSA §405(6-A)(1), noting that an executive session is only held if an individual's right to privacy or potential damage to reputation is involved. Mr. Corbin stated that making and keeping records of these executive sessions increases the likelihood of inadvertent disclosure of this sensitive information. He added that the law as it currently stands provides a remedy through the court system.

Ms. Lynch noted that executive sessions involve much more than just personnel matters, which seems to be the focus of the discussion. She asked Mr. Corbin whether, in these other contexts, were executive sessions to be recorded and legally discoverable, would that chill the candor of these municipal discussions? Mr. Corbin agreed that it would, relating feedback from some municipal representatives that had told him they would not hold executive sessions if this proposal went through.

After a bit more discussion, Mr. Higgins made a motion, seconded by Mr. Pringle, that the Advisory Committee not move forward to recommend any changes to the current law around executive sessions. The vote was unanimous.

The Criminal History Record Information Act (CHRIA) and the Judicial Branch

The Advisory Committee opened up discussion on a topic raised at earlier meetings, regarding the Criminal History Record Information Act (CHRIA) and the Judicial Branch's recent reversal of its policy of making confidential case files for dismissed cases. Ms. Meyer stated that she was satisfied with the Judiciary's current policy. There was no interest by members in having any further discussion.

Anonymous FOAA requests

In response to the Advisory Committee's request at its prior meeting for more information on the extent to which, if any, an agency may ask for the purpose of a FOAA requestor's request, staff began by reviewing current Maine law. Staff related that 1 MRSA §408-A provides the general principle that "a person has the right to inspect and copy any public record", and subsection 3 of that section provides that an agency or official "may request clarification concerning which public record or public records are being requested." Staff continued that an individual may be required to clarify their public records request by an agency, and that while nothing in FOAA prohibits an agency or public body from asking additional questions to a requestor, the requestor is not obligated to provide any other information to the agency and the agency may not discriminate in its response to the request regardless. Staff then directed the Advisory Committee to a handout with a comparison of other states' public records laws in regard to how they handle requestor identity and purpose.

Mr. Stout noted that often in the context of email requests, a requestor is anonymous by sheer virtue of their obscure email address and not by any intention of anonymity by the requestor. Mr. Pringle offered his opinion that a requestor should not be required to give their name or purpose when making a request for public records. Sen. Burns wondered if members thought a change should be made to FOAA to prohibit agencies from asking a requestor's name or purpose, with several members disagreeing that this was needed. Mr. LaHaye posed to the group whether there should be a distinction between commercial and non-commercial purposes of requestors. Mr. Higgins shared his view that if a record is open, it should be allowed to be used for whatever purpose the requestor wants. Mr. Pringle shared that the Advisory Committee has wrestled with the commercial/non-commercial distinction in the past, and could never work out how to precisely define the difference between the two. Mr. Parr noted that as a practical matter, even if there were a distinction made, a person can have someone else request a public record for them, in order to get around the restriction. He also wondered what the State's policy would be for what to do with requestor information if collected.

The Advisory Committee voted unanimously to take no action on this topic. Rep. Moraghan noted that if there were major concerns regarding anonymous FOAA requests, such as voiced by Planned Parenthood, then those parties could raise this with their legislators to bring legislation forward in the next legislative session.

Summary of September 14, 2016 meeting

Public Hearing – Maine's Freedom of Access Act

The Advisory Committee held a public hearing to gather public input on how Maine's Freedom of Access Act (FOAA) is working, inviting testimony from any interested parties that wished to address the group. The testimony and discussion is summarized below.

Dr. Dwight Hines stated that there were no incentives for a public agency to keep an information inventory, resulting in unreasonable delays in providing information in response to public records requests that should be reasonably anticipated and to which the agency should be able to easily respond.

Dr. Hines also stated his view that it is a problem that the court system is not covered by FOAA. He testified that public officials were too often turning FOAA requests over to attorneys, causing delays and making it more difficult for the requestor to communicate about the request. He noted that meetings that should be public are not being properly noticed, and that at noticed meetings it is apparent that the public body has already privately had their discussion and made their decision. He opined that the value of the open records law is to get people involved in their government and that he has noticed that community cohesiveness has become a problem in recent decades. After 1975, he noted, there was a decline in community engagement with town government and town councils not acting openly and not creating an inclusive atmosphere. Dr. Hines noted that he has observed public bodies causing unnecessary delays in court proceedings in which a requestor is challenging the public body's response to a public records request under FOAA, with these delays having the effect of running up legal costs for the requestor mounting the challenge. He stated his desire that the medical examiner share data. He stated that the

State's administrative courts are a dark place regarding governmental transparency. Dr. Hines stated that the public is not currently getting the "sunlight," i.e. government transparency, it deserves. He noted that civilian review boards of police departments are a positive thing, although they are expensive. Dr. Hines stated that nothing in FOAA requires quality of information. He noted that there was not a spirit of open government, even on the Advisory Committee.

Sen. Burns thanked Dr. Hines for his comments and asked if he would mind providing written comments, to which Dr. Hines agreed. Mr. Stout asked Dr. Hines about agency delays in responding to FOAA requests and their use of technology; Dr. Hines stated that agencies appeared to be afraid of providing information, so they delay, and wondered why it would take so long for agencies to access a database. Dr. Hines cited a "computer mendacity."

Sen. Burns asked if Dr. Hines thought there may be a problem with agency access to technology, to which Dr. Hines replied there was not and that agencies seemed to currently have more than they can actually use. Dr. Hines lamented that there were not incentives to use modern technology such as email, due to public officials' fear of FOAA.

Rep. Monaghan and Sen. Burns acknowledged this concern, each noting that given modern technology and how easy it is to communicate via emails and text messages, it is unfortunate that fear of FOAA is putting some in the position of not being able to efficiently use this technology.

Sen. Burns then asked staff to provide information from the two pieces of written testimony, submitted prior to the public hearing. Staff first related comments received from Lt. Gerald Congdon of the Wells Police Department, who expressed frustration with the difficulty in navigating what can be released in a FOAA request. Lt. Congdon recommended a flowchart be created to provide an easy to follow reference for public officials in responding to FOAA requests. Staff next related the comments received from Robin Hadlock Seeley of Pembroke. Ms. Seeley suggested that the law provide guidelines for a reasonable response time for agencies and other public bodies responding to FOAA requests. She also expressed concern that town officials, both elected and unelected, are unfamiliar with FOAA, including understanding which records are public and what notice is required before a public meeting.

Rep. Monaghan inquired from Ms. Kielty whether or not there is an existing flowchart type of summary of FOAA obligations of public officials and bodies. Brenda Kielty, Public Access Ombudsman, replied that there was not one currently, but that she would produce one and distribute it. Sen. Burns asked Ms. Kielty if she had any recommendations regarding FOAA and possible improvements to the law. Ms. Kielty stated that FOAA is a balancing statute, and thus needs to be evolving and dynamic. She agreed to provide written comments for the Advisory Committee's consideration.

Mr. Pringle stated that he was in favor of having a flowchart developed, but noted the problem with this type of summary is that it will inevitably vary depending on the type of specific information being sought. Ms. Kielty acknowledged this concern and stated that she would follow up with Lt. Congdon to determine his needs.

Garrett Corbin of the Maine Municipal Association (MMA) next addressed the group. With respect to the flowchart, Mr. Corbin noted that this suggestion came about due to outreach efforts by MMA. Having discussed with attorneys in the legal department at MMA, who regularly provide information to municipal members in response to legal questions that include FOAA questions, Mr. Corbin relayed concerns with the fee amount that can be charged by the municipality or other public body for responding to FOAA requests. The current \$15 per hour rate that can be charged for time spent past the first hour of responding to a FOAA request is very low, especially given that responding to such requests often requires paying for the services of attorneys. Mr. Corbin recommended a fee standard that permitted actual costs to be assessed to a requestor, perhaps with some sort of balancing mechanism.

Sen. Burns asked about issues with timeliness of FOAA responses, and Mr. Corbin replied that no concerns had been relayed to him. Rep. Monaghan asked if Mr. Corbin could provide written testimony for the Advisory Committee, to which he agreed. She then asked him what he thought of the issue raised by Ms. Seeley in her testimony, regarding inadequate FOAA training for municipal officials. Mr. Corbin replied that FOAA places responsibility for training on the municipalities. MMA tries to help, he stated, but it is ultimately up to the municipality. He expressed doubt about how widespread the issue is. Mr. Stout asked Mr. Corbin about his thoughts and perspective on electronic data retrieval by municipalities in the FOAA context. Mr. Corbin stated that he was unsure, but noted that municipalities face pressures with available staff time due to the tightening of municipal funding. Mr. Parr asked what Mr. Corbin took, if anything, from the low turnout at the public hearing, to which Mr. Corbin speculated that FOAA issues tend to be small and discrete, except for certain issues that get large press coverage, and perhaps there was a lack of media coverage about the public hearing. Mr. Parr noted his surprise that more input was not being provided from the public on how FOAA might work better, given the large media interest in FOAA issues this summer.

Sen. Burns suggested that one shouldn't read too much into the low attendance at the public hearing. He stated his desire for an additional meeting for the Advisory Committee, in order to complete unfinished business and to see if there may be a consensus with regard to taking action in response to comments received. There were no objections, and the next meeting of the Advisory Committee was scheduled for October 5th.

Hazardous material transported by railroads

Staff provided copies of the final draft letter from the Advisory Committee to the Legislature's Judiciary Committee regarding the public records exception at 1 MRSA §402, sub-§3, ¶U, which makes confidential records provided by a railroad company describing hazardous materials transported by the railroad company that are in the possession of a state or local emergency management agency or law enforcement agency, fire department or other first responder. The Advisory Committee approved the letter, which staff will send to the Judiciary Committee and which will also be included in the Advisory Committee's annual report.

Personal contact information for professions and occupations licensed by the State

Staff reviewed another draft letter from the Advisory Committee to the Judiciary Committee, this one regarding public access to personal contact information for individuals licensed or applying for licensure with the State. The letter reflected the recommendations made by the Advisory Committee on this issue at its August 17th meeting. There was a minor change made from a draft of the letter circulated to Advisory Committee members prior to the meeting, based on recommendations from Sen. Burns and Mr. Parr, so that the letter references the need to balance the privacy interests of the licensees against the “consumer interests” of the public, as opposed to the “public safety interests” of the public. The Advisory Committee approved the letter, which staff will send out to the Judiciary Committee and which will also be included in the Advisory Committee’s annual report.

Annual Report – preliminary draft

Staff reviewed a preliminary draft of the annual report with the Advisory Committee. A more complete draft will be presented for review at the next meeting.

Public Records Exceptions Subcommittee recommendations relating to review of existing public records exceptions enacted from 2005- 2012, pursuant to 1 MRSA §433

After an introduction by Rep. Monaghan, staff presented the recommendations of the Public Records Exceptions Review Subcommittee. For most of the reviewed public records exceptions, after staff described the exception and the Subcommittee’s recommendation, the Advisory Committee adopted the Subcommittee’s recommendation of continuing the exception with no modification. The Advisory Committee recommends no modification to the following exceptions, identified by reference number as listed on the chart prepared by staff: 6, 13, 36, 37, 39, 40, 41, 42, 51, 54, 56, 59, 60, 61, 62, 64, 65, 67. The following items resulted in notable discussion or disagreement with the Subcommittee’s recommendation.

With respect to the public records exception at 1 MRSA §402, sub-§3, ¶C-1 (Advisory Committee reference number 2), relating to certain personal information contained in communications between an elected official and a constituent, staff reviewed proposed legislation based on the recommendation of the Subcommittee that the exception apply to the entire record of the communication, as opposed to certain types of information found within the record of the communication. The legislation would provide, however, that such records must be public if the specified categories of information contained within the communication can be easily redacted, and that such redaction must occur before release of the records.

Mr. Pringle stated that this legislation would turn the presumption that a record is public on its head. He noted that the public seeking information about a communication between an elected official and constituent would either receive a redacted copy or not receive anything. He also pointed out that the “significant effort” standard by which the record would be determined to be public is unclear and would constitute a new judicial standard.

Mr. Parr acknowledged Mr. Pringle’s points, but noted that one could approach this from another perspective. The problem with the current statute, he noted, is that public records are defined in law but FOIA is often focused on information within records, as opposed to the records

themselves. Mr. Parr explained that this creates a burden on the agency to identify information excepted from FOAA and to redact if appropriate. He noted that it can be very challenging for a public official to make the determination whether or not certain information falls within a public records exception, and that this puts a lot of responsibility and risk on the public officials who need to decide whether or not to redact. Mr. Parr also stated that this burdensome process can lead to perceived delay in providing records pursuant to FOAA request. Mr. Parr agreed with Mr. Pringle's point about the judicial standard in the language, and suggested that perhaps "unduly burdensome" would be a better test because it would be more familiar in the context of FOAA.

Mr. Stout echoed that non-public information embedded in records that are otherwise public is an example of why responding to FOAA requests can be a lengthy process. He noted that in the context of constituent communications, communication is easy via email and sensitive information may be easily shared. He also noted that technology makes the expectations around producing records and information to requestors an ever-changing challenge.

Rep. Monaghan stated that she tries to not let constituents provide too much personal information in their emails, and that the public needs to understand what information in a communication with an elected official will be considered public. Mr. Burns shared her concerns, stating that there should be a disclaimer and a link to the FOAA law on every legislator's email. He also noted, however, that quite often constituents send very personal information before they would have a chance to see a disclaimer on the legislator's email.

Mr. Pringle acknowledged that there is a struggle associated with redacting, but that this is the price the government must pay to ensure openness. He also noted that the Advisory Committee has tried to accommodate agencies in this regard by recommending legislation allowing them to charge the requestor a fee.

Ms. Pistner expressed her discomfort with the reference to redacting in the proposed legislation, noting this would be a unique reference in FOAA and wondering what this would tell the courts about when redaction is or is not required. Ms. Lynch suggested that this should go back to the Subcommittee for review, because Subcommittee members had not seen this draft since making their original recommendation. Mr. Parr suggested that language be added to have a standard disclaimer regarding FOAA and constituent emails for elected officials and perhaps getting rid of the exception altogether. Mr. Burns expressed interest in Mr. Parr's suggestion about the email disclaimer, and wondered if perhaps this could be accomplished with a policy of the Legislature instead of a statute.

Mr. Parr made a motion, seconded by Mr. Stout, to send this issue back to the Subcommittee for further discussion.

Mr. Stout stated that the word "redaction" was introducing a new term to the law, and that redaction is becoming more and more of an issue that agencies are faced with when dealing with electronic records, particularly emails. Mr. Parr echoed Ms. Pistner's concern about using the term redaction, but noted that it was also used in FOAA at 1 MRSA §480-A. Mr. Parr closed the

conversation noting that this issue was also representative of his broader frustrations with FOAA – when you make specific information confidential it will require redaction.

The Advisory Committee approved the motion by a unanimous vote of those present.

With respect to the public records exception at 1 MRSA §402, sub-§3, ¶R, (Advisory Committee reference number 7), relating to Social Security numbers in possession of the Secretary of State, staff related the information gathered from the Secretary of State's Office and Bureau of Motor Vehicles (BMV) in response to the Advisory Committee's questions about this exception at its September meeting. The agencies did not object to the repeal of the exception, given the broader exception for Social Security Numbers in paragraph N of the same subsection of the statute. A representative of the BMV, Robert O'Connell, appeared before the Subcommittee earlier in the day to discuss this item as well as item number 55, discussed below.

Regarding the confidentiality provision at 29-A MRSA §1301 (Advisory Committee reference number 55), staff related that the BMV had shared draft legislation with the Subcommittee that would amend this confidentiality provision by eliminating the discretionary sharing of Social Security Numbers as permitted by federal law and instead allowing the sharing of this information only as required by federal law, specifically 18 United States Code, Section 2721(b). Mr. O'Connell had notified the Subcommittee that the Secretary of State would be submitting a bill to accomplish this to the next Legislature. Staff passed along the Subcommittee's recommendation that the Advisory Committee indicate endorsement of this change but not recommend legislation because the Secretary of State will submit the bill. Mr. Parr made a motion, seconded by Ms. Lynch, that the Advisory Committee endorse the Secretary of State's proposal but not recommend any modification to this confidentiality provision. The motion passed with a unanimous vote of those present.

With respect to 12 M.R.S. §10110 (Advisory Committee reference number 38), relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license, staff reviewed a draft letter from the Advisory Committee to Chandler Woodcock, Commissioner of Inland Fisheries and Wildlife, based on the recommendations of the Subcommittee. Staff explained that in response to inquiries on this exception, the Department of Inland Fisheries and Wildlife had proposed an amendment that would expand the exception to make the email addresses of individuals applying for permits and registrations as well as hunting licenses confidential. Under the proposal, the commissioner would also be permitted to allow a member of the public to clearly indicate that the individual's email address not be kept confidential. The proposal included additional exceptions to confidentiality to allow the department to disclose email addresses to a contractor or state agency for marketing or wildlife management purposes. The draft letter expresses that while the group is supportive of a default confidentiality of this information, it does not have sufficient information or understanding of the scope of the proposed exception to recommend the legislation, and encourages the Commissioner to submit the Department's proposal as a bill to the next Legislature. The Advisory Committee approved of the letter unanimously.

With respect to 22 MRSA §1711-C, sub-§20 (Advisory Committee reference number 50), relating to the names and other identifying information of individuals in a state-designated

statewide health information exchange, the Advisory Committee had tabled this item at its last meeting after several members hesitated to endorse the recommendation of the Subcommittee to repeal this provision as unnecessary. At the Advisory Committee's August meeting, Mr. Parr had asked staff whether the confidentiality protections of the federal Health Insurance Portability and Accountability Act (HIPAA) applied to these records. Staff discussed the public records exception in FOAA at 1 MRSA §402, sub-§3, ¶A that excludes from the definition of public records any records designated confidential by another statute, noting that though the courts in the State of Washington had interpreted a nearly identical provision as including the statutes of other states and the Federal Government, it was unclear what breadth the Maine courts would attribute to this provision of FOAA. Staff advised that regardless, the confidentiality provisions under HIPAA and its associated regulations very likely apply to Maine HealthInfo Net as a "business associate" of a "covered entity," and indeed HealthInfoNet considers itself bound by HIPAA. Staff stated that HIPAA explicitly preempts state law that is less protective of private health information and therefore would apply as a minimum regardless of any conflicting provisions of State law. Staff counseled that their analysis was based on the organization of the current state-designated statewide health information exchange in Maine, and that it was possible that changes to the health information exchange system or provider could change the analysis. The Advisory Committee voted to continue the current confidentiality provision without any modification.

With respect to the public records exception at 35-A MRSA §10106 (Advisory Committee reference number 69), relating to records of the Efficiency Maine Trust and its board, staff related the Subcommittee's recommendation of proposed legislation provided by the Executive Director of the Efficiency Maine Trust, Michael Stoddard. Staff reviewed the proposed amendment, which would move the authority to determine whether records of the trust were business sensitive, and therefore confidential, from the board to the director. It also gives authority to the director, as opposed to the board, in making the determination of what information that would be otherwise confidential may be released. Additionally, the amendment would replace an "and" with an "or," so that any of the criteria for confidential trust records may be present instead of all criteria needing to be met in order for the records to be determined confidential.

Ms. Lynch stated that although she had voted in favor of this amendment at the Subcommittee meeting, after re-reading it she had concerns about the language, particularly the implications of the new "or" with the application to entire "records," which would broaden the current confidentiality provision more than originally intended. Ms. Lynch made a motion, seconded by Mr. LaHaye, to refer this item back to the Subcommittee for additional review. The motion passed with a unanimous vote of those present.

Other issues or questions

At the invitation of Sen. Burns for Advisory Committee members to suggest additional issues for discussion, Mr. Parr raised an issue posed by a recent court holding that under FOAA an agency cannot require payment of a fee from a requestor before providing documents pursuant to a FOAA request once the agency's work of searching and compiling documents has already been completed. Mr. Parr asked that the next meeting agenda include an item to discuss modifying

the advance payment provision of FOAA at 1 MRSA §408-A. Additionally, Mr. Parr wanted the group to discuss whether FOAA should allow for litigation over records that have previously already been provided to an individual. Ms. Lynch noted that she would be abstaining from any discussion on this topic. By consensus, the group agreed to place this item on the next agenda.

Mr. Stout made a motion, seconded by Mr. Parr, for an item to be added to the next meeting agenda to discuss the Advisory Committee forming a subcommittee on technology. The motion passed with a unanimous vote of all present.

Summary of October 5, 2016 meeting

[to be added]

VI. ACTIONS RELATED TO COMMITTEE RECOMMENDATIONS CONTAINED IN TENTH ANNUAL REPORT

The Right to Know Advisory Committee made two recommendations in its tenth annual report. The legislative actions taken in 2016 as a result of those recommendations are summarized below.

<p>Recommendation: Enact legislation authorizing the use of technology to permit remote participation in public proceedings by non-elected members of public bodies</p>	<p>Action: A majority of the Judiciary Committee voted “Ought Not to Pass” on the recommendations of the Advisory Committee to authorize the use of technology to permit remote participation in public proceedings contained in LD 1586, <i>Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceeding</i>; however, a minority of the Judiciary Committee proposed an amendment that would have required a governmental entity to adopt a written policy governing remote participation by members that also describes how the policy meets the principles of FOAA. The bill and the amendmer were not enacted.</p> <p>The Judiciary Committee also considered another bill related to remote participation in public proceedings, LD 1241, <i>An Act To Increase Government Efficiency</i>, which was carried over from the First Regular Session to the Second Regular Session. As finally enacted, LD 1241 permits the board or commission of each of four State bonding authorities (the Maine Governmental Facilities Authority, the Maine Health and Higher Educational Facilities Authority, the Maine State Housing Authority and the Maine Municipal Bond Bank) to conduct public proceedings with members participating via remote access technology in certain circumstances. LD 1241 was finally enacted as Public Law 2016, chapter 449.</p>
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<p>Recommendation: Continue without modification 24 of the existing public records exceptions enacted after 2004 and before 2013</p>	<p>Action: No action by the Legislature was necessary since the Advisory Committee recommended no changes to the existing public records exceptions that were reviewed.</p>
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VII. RECOMMENDATIONS

Arising from its activities and discussions in 2016, the Advisory Committee makes the following recommendations in this, its eleventh annual report.

- Encourage the Judiciary Committee to consider proposed legislation to review the current public records exception that protects as confidential records provided by a railroad company describing hazardous materials transported by rail in the State**

At the Judiciary Committee’s request, the Advisory Committee reviewed the public records exception in current law that protects as confidential records provided by a railroad company describing hazardous materials transported by the railroad company that are in the possession of a state or local emergency management agency or law enforcement agency, a fire department or other first responder. See 1 MRSA §402, sub-§3, ¶U. The Judiciary Committee’s request was prompted by media articles following enactment of the exception indicating that the public’s access to information about the transportation of crude oil through the State may be limited and your interest in ensuring that the public have an additional opportunity to comment and, if necessary, to recommend changes to current law.

The Advisory Committee discussed the public records exception and agreed that the exception may benefit from additional consideration. The Advisory Committee recommends that the Judiciary Committee consider submitting a committee bill to the First Regular Session of the 128th Legislature so that the current exception may be fully vetted by the Legislature in a manner that allows the most meaningful participation by stakeholders, state and local government entities and other members of the public. The Advisory Committee believes that the current exception is not intended to prevent public access to summary or aggregate information about the transportation of hazardous materials by rail in the State, particularly crude oil, or to prohibit disclosure of information about spills or discharges of hazardous materials. The Advisory Committee also expressed the concerns about the current exception as written.

See correspondence in Appendix ___.

- Advise the Judiciary Committee about guidelines for considering proposed legislation relating to the confidentiality of personal information about professional and occupational licensees and applicants** *{finally approved and recommended at September 14th meeting}*

During the Second Regular Session, the Legislature enacted LD 1499, An Act to Increase the Safety of Social Workers”, which created a new confidentiality provision for social worker licensees’ and license applicants’ addresses and telephone numbers. In response to suggestions to include other types of licensed professionals in the scope of the confidentiality exception, the Judiciary Committee asked for the Advisory Committee’s assistance in developing a uniform policy for all professions and occupations. Under current law, some licensing boards, e.g., nurses, physicians and osteopaths, make certain licensee information confidential already. The Advisory Committee had extensive discussions about the request to develop comprehensive recommendations for the treatment of personal contact information for professions and occupations regulated by the State.

The Advisory Committee agreed that any uniform policy needs to balance the consumer interests of the public in having access to licensee information with the privacy interests of licensees and license applicants. The public has a legitimate need for access to licensing information to ensure that individuals employed in certain professions and occupations are adequately trained and competent, but licensed professionals also have an interest in privacy and personal safety.

The Advisory Committee recommends (*by a vote of 11-2*) that the Judiciary Committee adhere to an approach that focuses on what categories of personal information about licensees should not be accessible to the public, rather than specifying what licensing information should be public. The Advisory Committee supports the general principle that personal contact information should not be public, similar to the criteria at 1 MRSA §402, sub-§3, ¶O for protecting public employee personal information. Pursuant to 1 MRSA §402, sub-§3, ¶O, the home addresses, home phone and fax numbers, personal cellphone numbers and home email addresses are confidential. The Advisory Committee recognizes that, in cases in which the licensee or license applicant has only provided a personal address and not a public business address to a licensing board, the personal address should not be kept confidential. The Advisory Committee also discussed the merits of providing licensees and license applicants an approach that would permit individuals to opt-in or affirmatively approve the disclosure of personal contact information or developing a form for use by the licensing entity that would make public certain information, but would exclude personal information about the individual from being disclosed to the public.

See correspondence in Appendix ___.

- Continue without modification, amend or repeal certain existing public records exceptions enacted after 2004 and before 2013** { *reflects Subcommittee recommendations adopted before and during September 14th meeting; additional recommendations to be added if further recommendations are adopted* }

The Advisory Committee recommends that the following exceptions enacted after 2004 and before 2013 be continued without modification.

- ◆ Title 1, section 402, subsection 3, paragraph N, relating to social security numbers;
- ◆ Title 1, section 402, subsection 3, paragraph O, relating to personal contact information concerning public employees other than elected officials;

- ◆ Title 1, section 402, subsection 3, paragraph Q, relating to security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events for Department of Corrections or county jail;
- ◆ Title 1, section 1013, subsection 2, relating to the identity of a requestor of Commission on Governmental Ethics and Election Practices opinions;
- ◆ Title 1, section 1013, subsection 3-A, relating to complaint alleging a violation of legislative ethics;
- ◆ Title 1, section 1013, subsection 4, relating to Commission on Governmental Ethics and Election Practices records other than complaints;
- ◆ Title 5, section 1541, subsection 10-B, relating to internal audit working papers of the State Controller;
- ◆ Title 12, section 8005, subsection 1, relating to social security number, addresses, phone numbers, email addresses of forest landowners owning less than 1,000 acres;
- ◆ Title 12, section 8005, subsection 2, relating to social security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs;
- ◆ Title 12, section 8005, subsection 4, relating to forest management information designated confidential by agency furnishing information;
- ◆ Title 12, section 10110, relating to a person's email address submitted as part of the application process for a hunting or fishing license;
- ◆ Title 12, section 12551-A, subsection 10, relating to smelt dealers reports, including name, location, gear and catch;
- ◆ Title 14, section 6321-A, subsection 4, relating to the financial information disclosed in the course of mediation under the foreclosure mediation program;
- ◆ Title 17-A, section 1176, subsection 1, relating to information that pertains to current address or location of crime victims;
- ◆ Title 17-A, section 1176, subsection 5, relating to request by crime victim for notice of release of defendant;
- ◆ Title 21-A, section 196-A, relating to information contained electronically in the central voter registration system;

- ◆ Title 21-A, section 1003, subsection 3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices;
- ◆ Title 21-A, section 1125, subsection 3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet;
- ◆ Title 22, section 1711-C, subsection 20, relating to hospital records concerning health care information pertaining to an individual;
- ◆ Title 22, section 2153-A, relating to information provided to the Department of Health and Human Services by the U.S. Department of Agriculture and the U.S. Food and Drug Administration that is confidential under federal law;
- ◆ Title 22, section 2425, subsection 8, relating to medical marijuana registry identification cards;
- ◆ Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman;
- ◆ Title 25, section 4202, relating to records and information connected in any way with the work of a critical incident stress management team for law enforcement personnel;
- ◆ Title 29-A, section 1301, subsection 6-A, relating to the social security number of an applicant for a drivers' license or non-driver identification card;
- ◆ Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in an accident report database;
- ◆ Title 30-A, section 4706, subsection 1, relating to municipal housing authorities;
- ◆ Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board;
- ◆ Title 32, section 91-B, subsection 1, paragraph B, relating to information about a person receiving emergency medical services as part of an application for credentialing by Emergency Medical Services Board;
- ◆ Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to trauma incidence registry program under Title 32, section 87-B;
- ◆ Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board;

- ◆ Title 34-A, section 11221, subsection 9-A, relating to disclosure of certain sex offender registry information;
- ◆ Title 34-A, section 11221, subsection 13, relating to disclosure of certain sex offender registry information;
- ◆ Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification;
- ◆ Title 35-A, section 122, subsection 1-B, paragraph G, relating to information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this section or activities in preparation for such sale, lease or use in the context of energy infrastructure corridors;
- ◆ Title 36, section 6271, subsection 2, relating to an application, information submitted in support of an application and files and communications in relation to a municipal property tax deferral program for senior citizens;
- ◆ Title 38, section 580-B, subsection 11, relating to records held by the Department of Environmental Protection or its agents regarding individual auctions administered under the carbon dioxide cap-and-trade program; and
- ◆ Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans.

The Advisory Committee recommends that the following exception be repealed.

- ◆ Title 1, section 402, subsection 2, paragraph R, relating to social security numbers in possession of Secretary of State (*exception is redundant since social security numbers are not a public record under Title 1, section 402, subsection 2, paragraph N*).

The Advisory Committee recommends that the following exceptions be indefinitely postponed and removed from the review process.

- ◆ Title 1, section 402, subsection 2, paragraph G, relating to committee meetings pertaining to interscholastic sports (*review not necessary because exception is not related to a public record and is not required by law*);
- ◆ Title 7, section 2321, subsection 3, relating to criminal history records provided by the Commissioner of Agriculture, Conservation and Forestry as part of an application to grow industrial hemp for commercial purposes (*provision repealed by Public Law 2009, chapter 320, section 1*);

- ◆ Title 21-A, section 1125, subsection 2-B, relating to records of individuals who made Clean Elections gubernatorial seed money contributions over the Internet (*provision repealed by Citizen's Initiative*); and
- ◆ Title 24-A, section 2736, subsection 2, relating to insurer rate filings on individual health insurance policies and supporting information in regards to protected health information and descriptions of the amount or terms or conditions or reimbursement in a contract between an insurer and a 3rd-party (*review not necessary*).

VIII. FUTURE PLANS

In 2016, the Right to Know Advisory Committee will continue to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access and the recommendations of the Advisory Committee for existing public records exceptions enacted after 2004 and before 2013. The Advisory Committee looks forward to a full year of activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations included in this report.

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APPENDIX A

Authorizing Legislation: 1 MRSA §411

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APPENDIX B

Membership List

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APPENDIX C

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APPENDIX D

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APPENDIX E

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APPENDIX F

PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE

Maine Freedom of Access Act - public records exceptions

Enacted 2005 - 2012

(Revised 9/14/2016)

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
1	1	402	2	Title 1, section 402, subsection 2, paragraph G, relating to committee meetings pertaining to interscholastic sports	Maine Principal's Association - Interscholastic Management Committee	Indefinitely postpone because this is a public meetings exception	Accepted Subcommittee recommendation
2	1	402	3	Title 1, section 402, subsection 3, paragraph C-1, relating to legislative working papers	Legislative Council, Executive Director	Amend to apply to records instead of information	Tabled; review again in Subcommittee
3	1	402	3	Title 1, section 402, subsection 3, paragraph N, relating to Social Security Numbers	Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive	No Modification	Accepted Subcommittee recommendation
4	1	402	3	Title 1, section 402, subsection 3, paragraph O, relating to personal contact information concerning public employees other than elected officials	Department of Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive Director; Administrative Office of the Courts	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	A/C RECOMMENDATION
5	1	402	3	Title 1, section 402, subsection 3, paragraph P, relating to geographic information regarding recreational trails on private land	Department of Inland Fisheries and Wildlife; Department of Agriculture, Conservation and Forestry	No Modification	Accepted Subcommittee recommendation
6	1	402	3	Title 1, section 402, subsection 3, paragraph Q, relating to security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events for Department of Corrections or county jail	Department of Corrections	No Modification	Accepted Subcommittee recommendation
7	1	402	3	Title 1, section 402, subsection 3, paragraph R, relating to Social Security numbers in possession of the Secretary of State	Secretary of State	Repeal (reconsidered at 9/14/16 meeting)	Accepted Subcommittee recommendation to repeal

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
8	1	538	3	Title 1, section 538, subsection 3, relating to InforME subscriber information	Information Resources of Maine (InforME)	No Modification	Accepted Subcommittee recommendation
9	1	1013	2	Title 1, section 1013, subsection 2, relating to the identity of a requestor of Commission on Governmental Ethics and Election Practices opinions	Commission on Governmental Ethics and Election Practices	No Modification	Accepted Subcommittee recommendation
10	1	1013	4	Title 1, section 1013, subsection 4, relating to Commission on Governmental Ethics and Election Practices records other than complaints	Commission on Governmental Ethics and Election Practices	No Modification	Accepted Subcommittee recommendation
11	1	1013	3-A	Title 1, section 1013, subsection 3-A, relating to complaint alleging a violation of legislative ethics	Commission on Governmental Ethics and Election Practices	No Modification	Accepted Subcommittee recommendation
12	4	1806		Title 4, section 1806, relating to certain information and records in the possession of the Maine Commission on Indigent Legal Services	Maine Commission on Indigent Legal Services	No Modification	Accepted Subcommittee recommendation
13	5	1541	10-B	Title 5, section 1541, subsection 10-B, relating to internal audit working papers of the State Controller	Department of Administrative and Financial Services - Office of the State Controller	No modification	Accepted Subcommittee recommendation

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
14	5	17057	3	Title 5, section 17057, subsection 3, relating to home contact information of Maine Public Employees Retirement System members, benefit recipients and staff	Maine Public Employees Retirement System	No Modification	Accepted Subcommittee recommendation
15	5	17057	4	Title 5, section 17057, subsection 4, relating to Maine Public Employees Retirement System private market investment activity	Maine Public Employees Retirement System	No Modification	Accepted Subcommittee recommendation
16	5	17057	5	Title 5, section 17057, subsection 3, relating to Maine Public Employees Retirement System employees personal and complaint and disciplinary information	Maine Public Employees Retirement System	No Modification	Accepted Subcommittee recommendation
17	5	90-B	7	Title 5, section 90-B, subsection 7, relating to the Address Confidentiality Program	Secretary of State	No Modification	Accepted Subcommittee recommendation
18	7	1052	2-A	Title 7, section 1052, subsection 2-A, relating to total potential acreage of genetically modified crops reported by individual manufacturers	Department of Agriculture, Conservation and Forestry	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
19	7	2231	3	Title 7, section 2231, subsection 3, relating to criminal history records provided to the Commissioner of Agriculture, Conservation and Forestry as part of an application to grow industrial hemp for commercial purposes	Department of Agriculture, Conservation and Forestry	Repealed by PL 2009, ch. 320, section 1	Accepted Subcommittee recommendation
20	8	1006	1	Title 8, section 1006, subsection 1, paragraph A, relating to information or records required by the Gambling Control Board for licensure: trade secrets and proprietary information	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
21	8	1006	1	Title 8, section 1006, subsection 1, paragraph B, relating to information or records required by the Gambling Control Board for licensure: would be unwarranted invasion of privacy of key executive, gaming employee or another person	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
22	8	1006	1	Title 8, section 1006, subsection 1, paragraph C, relating to information or records required by the Gambling Control Board for licensure: key executive or gaming employee compensation	Department of Public Safety	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
23	8	1006	1	Title 8, section 1006, subsection 1, paragraph D, relating to information or records required by the Gambling Control Board for licensure: financial, statistical and surveillance information related to the applicant	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
24	8	1006	1	Title 8, section 1006, subsection 1, paragraph E, relating to information or records required by the Gambling Control Board for licensure: creditworthiness, credit rating or financial condition of person or project	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
25	8	1006	1	Title 8, section 1006, subsection 1, paragraph F, relating to information or records required by the Gambling Control Board for licensure: information from other jurisdictions conditioned on remaining confidential	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
26	8	1006	1	Title 8, section 1006, subsection 1, paragraph G, relating to information or records required by the Gambling Control Board for licensure: information designated confidential under federal law	Department of Public Safety	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
27	8	1006	1	Title 8, section 1006, subsection 1, paragraph H, relating to information or records required by the Gambling Control Board for licensure: specific personal information, including Social Security number, of any individual	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
28	8	1006	3	Title 8, section 1006, subsection 3, relating to records and information developed as part of suitability requirement to select operator of central site monitoring system, held by Gambling Control Board and Dept. of Public Safety	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
29	8	1006	4	Title 8, section 1006, subsection 4, relating to financial, statistical and surveillance information from the central site monitoring system held by the Gambling Control Board and the Dept. of Public Safety	Department of Public Safety	No Modification	Accepted Subcommittee recommendation

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
30	8	1007	2	Title 8, section 1007, subsection 2, relating to information or records received by the Gambling Control Board or Department of Public Safety from another agency pursuant to agreement	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
31	8	1008		Title 8, section 1008, relating to information or records used or produced by the Gambling Control Board or Department of Public Safety in connection with hearings, proceedings or appeals pursuant to Title 8, section 1052	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
32	8	1052		Title 8, section 1052, relating to reports, information or records compiled by the Gambling Control Board and Dept. of Public Safety concerning noncompliance with or violation of the chapter by an applicant, licensee, owner or key executive	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
33	8	270-A		Title 8, section 270-A, relating to records and information included in application or materials required for issuance of commercial track license	Department of Agriculture, Conservation and Forestry	No Modification	Accepted Subcommittee recommendation

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
34	9-A	6-105-A		Title 9-A, section 6-105-A, last paragraph, relating to information concerning uniform multistate licensing system provided to Consumer Credit Protection by other jurisdictions	Department of Professional and Financial Regulation - Bureau of Consumer Credit Protection	No Modification	Accepted Subcommittee recommendation
35	12	8005	1	Title 12, section 8005, subsection 1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	Department of Agriculture, Conservation and Forestry	No Modification	Accepted Subcommittee recommendation
36	12	8005	2	Title 12, section 8005, subsection 2, relating to Social Security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs	Department of Agriculture, Conservation and Forestry	No Modification	Accepted Subcommittee recommendation
37	12	8005	4	Title 12, section 8005, subsection 4, relating to forest management information designated confidential by agency furnishing the information	Department of Agriculture, Conservation and Forestry	5-1 No Modification	Accepted Subcommittee recommendation

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
38	12	10110		Title 12, section 10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license	Department of Inland Fisheries and Wildlife	No Modification; Send letter to IFW Committee expressing approval of opt-in language from DIFW but concern about marketing and contractors language	Accepted Subcommittee recommendation; send letter
39	12	12551-A	10	Title 12, section 12551-A, subsection 10, relating to smelt dealers reports, including name, location, gear and catch	Department of Inland Fisheries and Wildlife	No Modification	Accepted Subcommittee recommendation
40	14	6321-A	4	Title 14, section 6321-A, subsection 4, relating to the financial information disclosed in the course of mediation under the foreclosure mediation program	Administrative Office of the Courts	No Modification	Accepted Subcommittee recommendation
41	17-A	1176	1	Title 17-A, section 1176, subsection 1, relating to information that pertains to current address or location of crime victims	Department of Public Safety	No Modification	Accepted Subcommittee recommendation
42	17-A	1176	5	Title 17-A, section 1176, subsection 5, relating to request by crime victim for notice of release of defendant	Department of Corrections	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
43	20-A	13004	2-A	Title 20-A, section 13004, subsection 2-A, relating to complaints, charges and accusations concerning certification and registration of educational personnel	Department of Education	Review with full Advisory Committee	No modification
44	21-A	1003	3-A	Title 21-A, section 1003, subsection 3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices	Maine Commission on Governmental Ethics and Election Practices	No Modification	Accepted Subcommittee recommendation
45	21-A	1125	3	Title 21-A, section 1125, subsection 3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices	No Modification	Accepted Subcommittee recommendation
46	21-A	1125	2-B	Title 21-A, section 1125, subsection 2-B, relating to records of individuals who made Clean Elections gubernatorial seed money contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices	Indefinitely postpone because citizen's initiation repeals this exception	Accepted Subcommittee recommendation
47	21-A	196-A		Title 21-A, section 196-A, relating to information contained electronically in the central voter registration system	Secretary of State	No Modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
48	22	1494		Title 22, section 1494, relating to occupational disease reporting	Department of Health and Human Services	No Modification	Accepted Subcommittee recommendation
49	22	2425	8	Title 22, section 2425, subsection 8, relating to medical marijuana registry identification cards	Department of Health and Human Services	No Modification	Accepted Subcommittee recommendation
50	22	1711-C	20	Title 22, section 1711-C, subsection 20, relating to hospital records concerning health care information pertaining to an individual	HealthInfoNet	Repeal because information is already adequately protected and FOAA doesn't apply to HealthInfoNet	Did not accept Subcommittee recommendation; Unanimous vote to continue exception without modification
51	22	2153-A		Title 22, section 2153-A, relating to information provided to the Department of Health and Human Services by the U.S. Department of Agriculture and the U.S. Food and Drug Administration that is confidential under federal law	Department of Health and Human Services	No modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
52	22	4087-A	6	Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman	Child Welfare Ombudsman	No Modification	Accepted Subcommittee recommendation
53	24-A	2736	2	Title 24-A, section 2736, subsection 2, relating to insurer rate filings on individual health insurance policies and supporting information, in regards to protected health information and descriptions of the amount and terms or conditions or reimbursement in a contract between an insurer and a 3rd party	Department of Professional and Financial Regulation - Bureau of Insurance	No review. Not a new PR exception.	Accepted Subcommittee recommendation
54	25	4202		Title 25, section 4202, relating to records and information connected in any way with the work of a critical incident stress management team for law enforcement personnel	Department of Public Safety	No modification	Accepted Subcommittee recommendation

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
55	29-A	1301	6-A	Title 29-A, section 1301, relating to the social security number of an applicant for a driver's license or nondriver identification card	Secretary of State	No modification	Approve of language recommended by SOS but understand SOS will submit legislation to effect the change
56	29-A	2251	7-A	Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in an accident report database	Department of Public Safety		Accepted Subcommittee recommendation
57	29-A	2117-A	4	Title 29-A, section 2117-A, relating to data collected or retained through the use of an automated license plate recognition system	Department of Public Safety; Department of Transportation	Tabled. Reach out to DOT, Me. St. Police, BMV and trucking interests	
58	32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	Department of Public Safety	Tabled. Follow up re: first sentence	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
59	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board	Department of Public Safety	No modification	Accepted Subcommittee recommendation
60	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to information about a person receiving emergency medical services as part of an application for credentialing by Emergency Medical Services Board	Department of Public Safety	No modification	Accepted Subcommittee recommendation
61	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to the trauma incidence registry under section 87-B	Department of Public Safety	No modification	Accepted Subcommittee recommendation
62	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board	Department of Public Safety	Tabled. Follow up re: need for exam questions to be confidential	

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63	30-A	4706	1	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities	Maine State Housing Authority (MaineHousing)	No modification	Accepted Subcommittee recommendation
64	34-A	11221	13	Title 34-A, section 11221, subsection 13, relating to disclosure of certain sex offender registry information	Department of Public Safety	No modification	Accepted Subcommittee recommendation
65	34-A	11221	9-A	Title 34-A, section 11221, subsection 9-A, relating to certain sex offender registry information	Department of Public Safety	No modification	Accepted Subcommittee recommendation
66	34-B	1931	6	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board	Mental Health Homicide, Suicide, and Aggravated Assault Review Board (MHHSAAARB)	Tabled. Check if Homicide Review Board has replaced this board.	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
67	34-B	3864	12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	Department of Public Safety	No modification	Accepted Subcommittee recommendation
68	35-A	122	1-B	Title 35-A, section 122, subsection 1-B, paragraph G, relating to information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use in the context of energy infrastructure corridors	Interagency Review Panel (Governor's Energy Office)	No Modification	Accepted Subcommittee recommendation
69	35-A	10106		Title 35-A, section 10106 relating to records of the Efficiency Maine Trust and its board	Efficiency Maine	Voted no modification but needs to re-review to consider effect of making entire record confidential when it includes only SSN/address/email/telephone	Sent back to Subcommittee

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	SUBCOMMITTEE RECOMMENDATIONS	AC RECOMMENDATION
70	36	6271	2	Title 36, section 6271, subsection 2, relating to an application, information submitted in support of an application and files and communications in relation to a municipal property tax deferral program for senior citizens	Maine Municipal Association	No Modification	Accepted Subcommittee recommendation
71	38	1310-B	2	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	Department of Environmental Protection	No Modification	Accepted Subcommittee recommendation
72	38	580-B	11	Title 38, section 580-B, subsection 11, relating to records held by the Department of Environmental Protection or its agents regarding individual auctions administered under the carbon dioxide cap-and-trade program	Department of Environmental Protection	No Modification	Accepted Subcommittee recommendation