RIGHT TO KNOW ADVISORY COMMITTEE
PUBLIC RECORDS EXCEPTIONS REVIEW SUBCOMMITTEE

AGENDA
October 5, 2016
10:00 a.m.
Room 438, State House, Augusta

Convene

1. Welcome and Introductions

2. Continue review of public records exceptions enacted after 2004 and before 2013: discussion and recommendations to the full Advisory Committee

Adjourn

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	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	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	

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	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 (MHHSAARB)	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

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.

Sample language for Section 2 of Subcommittee proposed draft legislation, related to the federal Privacy Act of 1974, 5 U.S.C. § 552a, et seq.

> The term "personally identifiable information" refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.

Office of Management and Budget Memorandum M-07-16, "Safeguarding Against and Responding to the Breach of Personally Identifiable Information" (May 22, 2007)

Fouts, Henry

From: Linda Pistner <Lpistner@roadrunner.com>
Sent: Tuesday, October 04, 2016 3:19 PM
To: Fouts, Henry
Cc: Kielty, Brenda
Subject: comments on draft legislation re constituent mail and exception for personal information

Hi, Henry, here are my thoughts on the draft legislation we discussed. Thanks for forwarding them to the Chair and members for me.

Dear Members of the Right to Know Advisory Committee and Exceptions Subcommittee,

I am sorry that I won't be able to join you for Wednesday's meetings. Unfortunately (for me), the flu caught up to me before the state's flu shot clinic and I have been impatiently languishing at home. I did not even consider remote participation in these meetings, which will not surprise you given my views about the law. ;) I had intended to outline in writing my concerns about these two proposals in any event.

Section 1 makes the entire record of a constituent communication confidential if any of the listed personal information is contained in it, subject to an exception that makes such records public if the protected information can be redacted "without significant effort."

Constituent communications, as we know, can contain a lot of information that the constituent might believe is being shared only with a legislator. This provision of the FOAA is of course intended to protect that personal information, and many legislators now use a disclaimer or warning about the possibility that information sent to them may become public. However, these same records might also include requests for

legislation, or encourage the legislator to vote a particular way on pending legislation, information that is now and should continue to be public. This proposal would make that information confidential as well, and for that reason alone I would not support it.

There is another problem, one that I brought up at our last meeting, but very imprecisely. Redaction is mentioned in Sec. 408-A, as Chris Parr pointed out, but only as an activity for which time can be charged in determining fees for fulfilling a FOAA. What the last paragraph of Section 1 of the draft would do for the first time is establish a standard for when redaction is required. Currently any dispute about redaction can be resolved by a court on a case by case basis, an approach that has worked pretty well.

Some issues to consider in creating a standard for redaction: 1) should it apply in all circumstances, rather than just constituent communications; 2) while the suggested standard, "without significant effort," is too vague, what would be clearer, fair and meaningful; and 3) given the differing points of view of the numerous stakeholders, should more time be taken in crafting a standard, if that is to be pursued.

Section 2. This section creates a new exception of general application for several categories of personal information. Again, the records rather than just the personal information contained in them would be made confidential, which is too broad, particularly when applied to all public records. In addition, this proposal would conflict with a variety of laws and rules governing what is confidential in specific contexts, provisions that are tailored to circumstances. We have seen, for example, how even making just the address of a holder of a state professional or occupational license generates competing considerations.

Again, I regret not being with you today for what are always interesting discussions.

Best,

REF # 57

Nale, Craig

From: Parr, Christopher <Christopher.Parr@maine.gov>
Sent: Thursday, September 29, 2016 2:57 PM
To: Nale, Craig
Cc: Scott, Brian P; Scott, Bruce G
Subject: RE: RTKAC Subcommittee items

Craig:

I've spoken with Maj. Brian Scott about this.

The position of the Maine State Police is that the exception re: automated license plate recognition system data should remain in place.

Best, C

CHRISTOPHER PARR
STAFF ATTORNEY | MAINE STATE POLICE
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From: Nale, Craig [mailto:Craig.Nale@legislature.maine.gov]
Sent: Wednesday, September 28, 2016 9:18 AM
To: Parr, Christopher
Subject: RE: RTKAC Subcommittee items

Hi Chris,

Thanks for forwarding to Mr. St. Germain. About paragraph 1, the subcommittee members were seeking more information about the confidential information to justify the continuation of the exception. Perhaps the concern about the balance of public access and confidentiality could be addressed with some greater understanding of why (or whether) it would be a concern of the State for that information to be available to the public? The fact that DPS took no position on the exception seemed to concern the members, although there was not a more detailed discussion about particular issues with this one.

Craig

From: Parr, Christopher [mailto:Christopher.Parr@maine.gov]
Sent: Wednesday, September 28, 2016 7:45 AM
To: Nale, Craig; StGermain, Shaun A
Cc: Scott, Brian P
Subject: RE: RTKAC Subcommittee items
Importance: High

Craig:

Thanks for the email.

With this email I am forwarding your email below to Shaun St. Germain, Director of Maine Emergency Medical Services here at DPS. He is best able to respond to paragraphs 2 and 3 of your query.

Point of clarification: Is there a question with regard to paragraph 1?

C

CHRISTOPHER PARR
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From: Nale, Craig [mailto:Craig.Nale@legislature.maine.gov]
Sent: Tuesday, September 27, 2016 3:10 PM
To: Parr, Christopher
Subject: RTKAC Subcommittee items

Hi Chris,

At the last RTKAC Subcommittee meeting members had some additional questions or concerns about three provisions affecting DPS: Ref ## 57, 58 and 62.

Ref #57 is at 29-A MRSA § 2117-A(4). It makes data collected by an automated license plate recognition system confidential and available for use only by a law enforcement agency; DOT for protecting public safety and transportation infrastructure; and DPS/State Police for commercial motor vehicle screening and inspection. The exception does allow a law enforcement agency to publish aggregate data and to share commercial motor vehicle screening data for federal regulatory compliance purposes. Subcommittee members were concerned about the balance of confidentiality and public access because DPS did not take a position on whether the exception should be continued. Members asked that we reach out to DOT, BMV and commercial trucking representatives for further input, which I am doing.

Ref #58 is at 32 MRSA § 91-B(1). There are several exceptions in the opening paragraph and in paragraphs A-D below it, but the exception the Subcommittee is seeking further information on here is in the first sentence. The first sentence provides that "all proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the [Emergency Medical Services 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." Subcommittee members were concerned about the breadth of this exception, and especially with the confidentiality of reports, information and records provided to the Board.

Ref #62 is also within 32 MRSA § 91-B(1), but includes only ¶D. This exception makes examination questions used by the Emergency Medical Services Board to fulfill cognitive testing requirements (required by 32 MRSA § 85(3)(C)). A concern with the exception is whether those questions need to be confidential when applicants might find them useful for preparing for the exam (like bar applicants use old bar exam questions to study).

If I can help explain these any further or reach out to additional interested groups for some information please just let me know. Thanks again for all your help with these.

Craig

Craig T. Nale, Esq.
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Office of Policy and Legal Analysis
Maine State Legislature
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MAINE MOTOR TRANSPORT ASSOCIATION

142 Whitten Road P.O. Box 857 Augusta, Maine 04332-0857
(207) 623-4128 • FAX (207) 623-4096 • www.mmta.com
"The spokesman for the Maine Trucking Industry"

September 30, 2016

Dear Right to Know Advisory Committee,

Thank you for the opportunity to provide comment on the Committee's review of Title 29-A §2117-A, the use of automated license plate recognition systems (ALPR's), on behalf of our over 1,350 members. We regret we were unable to attend in person to provide our comments.

The Maine Motor Transport Association supports the law as currently written. It is our belief that the current exceptions to prohibit the use of automated plate readers are reasonable. The law affords protections to individuals and companies, while allowing the reasonable use of ALPR'S for specific purposes outlined in the law.

The Trucking Industry is directly impacted by the use of ALPR's on a daily basis as we are regulated by the Federal Motor Carrier Safety Administration and the Maine State Police because we are engaged in commerce. The Maine State Police, in particular, routinely utilize ALPR'S to screen truck traffic for compliance and safety. The use of this technology allows truck traffic to be screened with nominal interruption to daily delivery routines, keeping the flow of commerce moving. In an Industry where safety is the highest priority, ALPR's help to identify trucking companies with poor safety ratings, while allowing companies with excellent safety records to continue with little down time. This keeps the flow of goods and services, and our economy moving.

Subsection 4 of the law protects the confidentiality of the data collected and allows its use for limited purposes, which we support.

Please do not hesitate to contact myself or Tim Doyle if we can answer any questions. Again, thank you for the opportunity to comment.

Sincerely,

Brian Parke, President and CEO
Maine Motor Transport Association

STATE OF MAINE

OFFICE OF THE
SECRETARY OF STATE

MATTHEW DUNLAP
SECRETARY OF STATE

4 January 2011

The Honorable Ronald F. Collins, Senate Chair
Joint Standing Committee on Transportation
3 State House Station
Augusta, ME 04333

The Honorable Richard M. Cebra, House Chair
Joint Standing Committee on Transportation
2 State House Station
Augusta, ME 04333

Dear Senator Collins and Representative Cebra,

Attached please find the final report of the Automated License Plate Recognition System Working Group. Pursuant to Chapter 605 of the Public Laws 2010, the Secretary of State was charged with assembling the group and holding a series of public meetings over the use, limitations, and governance of the deployment of plate recognition technology.

I would like to thank all who participated, and in particular would like to thank the South Portland Police Department, without whose cooperation and hospitality in hosting the working group's meetings our work would have been much more difficult.

Please do not hesitate to contact our offices if you have any questions.

Sincerely,

Matthew Dunlap
Secretary of State

Report of the Automated License Plate Recognition System Working Group

Given to the Joint Standing Committee on Transportation

January 2011

Introduction:

Emerging technologies offer great promise for enhancing the ability of law enforcement officers to optimize their performance in executing their sworn duties. New technologies also offer new challenges to the public trust, however, which bear scrutiny and review to ensure that the use of new tools has public support.

The Automated License Plate Recognition Working Group was assembled pursuant to Chapter 605. PL 2010 (LD 1561), "*An Act to Regulate the Use of Automated License Plate Recognition Systems.*" LD 1561 was introduced by State Senator Dennis Damon, D-Hancock, amid concerns that plate recognition technologies, such as the South Portland Police Department implemented following a grant award, allow law enforcement officers far too much access to information about law-abiding citizens and their movements, and thus represents an untenable invasion of privacy. The original bill called for a proscription of such technologies. The bill was amended and passed into law outlining conditions of use and information retention schedules; and also the establishment, by the Secretary of State, of the Working Group whose product is this report.

The Working Group was fortunate in that the South Portland Police Department immediately recognized the force and weight of Senator Damon's concerns, and the echoing of those concerns by privacy advocates, by aggressively working on sophisticated policies of use of the plate recognition readers. Further, SPPD has been open and generous in making demonstrations of the equipment readily available so that members could better understand its uses and limitations.

The policies adopted by South Portland, coupled with draft policies from the International Association of Chiefs of Police and the Maine Chiefs of Police, provide a strong baseline for a statewide policy that should be considered for adoption by any agency.

The Working Group recommends that the Legislature adopt the following provisions:

- Amend MRSA Title 25, Section 2803-B to require a policy governing use of Automated License Plate Readers be adopted by a law enforcement agency seeking to employ the technology;
- The Board of Trustees of the Maine Criminal Justice Academy should adopt standards for a model policy based on the IACP model policy, and;

- License plate information collected by an agency incidental to a project should not be subjected to Freedom of Information Act requests, and should be purged immediately upon completion of the project.

These recommendations are more fully discussed in the report. The Chair wishes to thank all of the participants for their energy and insights, and particularly the South Portland Police Department, without whose experience and input this work would have been made much more difficult.

Chapter 605 and the working Group membership are included in Appendix A.

Automated License Plate Recognition Systems (ALPR's)

ALPR systems are fixed or mobile devices which use optical character recognition technology, and computer algorithms to convert license plate images into computer data. The plate data then can be searched against various law enforcement databases. Typically, an ALPR system is mounted on a police cruiser. The system scans license plates entering the system's field of view, and compares the image data to a previously defined database loaded into a computer in the cruiser. Upon a "hit", the officer is notified. The officer then must follow established procedure to verify the plate status, and to take any appropriate action.

Typically, the local database or "hot list" is a concatenation of several law enforcement motor vehicle-related databases including stolen vehicles, suspended registrations, tax and toll violators, vehicles registered to missing or wanted persons, or vehicles registered to other persons of interest. Specific registrations also may be entered into the hot list, for example for "AMBER" alerts.

Hot lists must be updated frequently to be of value.

ALPR's are able to store information about plates that have been read, including the plate number, date, time and location of the data capture. This data can be uploaded from the cruiser's computer to a central site and stored indefinitely. Potentially, the data may be combined with other public and private data sources, analyzed, or shared with other entities. In addition, as with any sensitive database, data security is a concern. This ability to retain, share and combine large amounts of data, and the potential ability to track a vehicle's movement over time raises privacy concerns.

ALPR Working Group:

The ALPR Working Group included representatives from the Department of Public Safety, the Maine Chiefs of Police, the Maine Sheriffs Association, the South Portland Police Department, and the Department of Attorney General, the Maine Civil Liberties Union, the Maine Turnpike Authority, Maine Department of Transportation, the Maine Legislature, ALPR vendors, municipalities, the general public, and the Department of Secretary of State. The Working

Group met three times at the South Portland Public Safety Building. The Working Group's meeting minutes and related documents have been posted to the Secretary of State's website at:

http://www.maine.gov/sos/alpr.htm

The Working Group reviewed ALPR-related issues, including several states' existing ALPR policies. The Working Group specifically reviewed the International Association of Chiefs of Police's (IACP) model ALPR policy, and the South Portland Police Department's policy. The Working Group noted that there are issues with respect to data collection, retention, access and usage. The Working Group agreed that state statutes and polices must be flexible and agile enough to address current and future issues, while protecting personal privacy.

The Working Group agreed to limit its discussions to issues primarily related to traffic enforcement and direct public safety. Issues and concerns relative to the use of ALPR technology for targeted criminal surveillance are beyond the Working Group's charge. The legislature should address these issues separately.

The Working Group noted that proposed state and municipal laws and policies go through a rigorous review process, often including a fiscal review. Still, it can be difficult for the public to track proposed policy changes.

The Working Group noted that the IACP's model policy on ALPR usage is comprehensive, adequately addresses privacy and confidentiality of data, and could serve as a model state policy. The IACP model policy is contained in Appendix B. The South Portland Police Department's policy is available at the website above. Draft legislation requiring the MCJA to create a model policy is contained in Appendix C.

The Working Group acknowledged that ALPR technology is an important law enforcement tool, enabling law enforcement personnel to be much more efficient and effective, resulting in increased highway safety. The Working Group also acknowledged that personal privacy and data confidentiality must be protected. The Working Group found that, in general, Maine has strong laws and policies in place to protect the public from the misuse of law enforcement-related data and intelligence.

The Working Group noted that Maine law enforcement agencies are required to develop and follow policies relative to most law enforcement actions. These polices must conform to the Maine Criminal Justice Academy's model policies, and must be submitted annually to the Board of Trustees for review. Failure of a law enforcement agency to submit their policies for review can result in prosecution. If an officer violates an agency policy, that officer can be disciplined including losing certification as a law enforcement officer.

The Working Group discussed the twenty-one day retention period for ALPR data currently in Maine law. While most law enforcement agencies likely would prefer a longer retention period, some members expressed concern about retaining the data at all. The Working Group noted that the current twenty-one day limit is a compromise, and agreed not to recommend any change at this time to the maximum retention period.

The Working Group noted that some non-law enforcement agencies use ALPR-type technology including the Maine Turnpike Authority, and the Maine Department of Transportation. The MTA uses cameras at toll booths to capture images only of toll violators. A person processes these photos individually. The MDOT uses imaging to analyze traffic patterns, including in particular, turning movements. MDOT uses only the last three digits of the plate, and never needs to determine the vehicle registrant.

Working Group Findings and Recommendations:

The Automated License Plate Recognition Working Group makes the following findings and recommendations:

- Maine's privacy and confidentiality laws with respect to law enforcement data and intelligence are sufficient to protect citizens' rights. Law enforcement agencies must protect and hold confidential intelligence information including ALPR data.

- LD1561 clarified the use of ALPR data, and limited its retention and dissemination.

- Law enforcement agencies planning to use ALPR technology should be required to adopt a usage policy based on a model policy approved by the Maine Criminal Justice Academy. 25 MRSA 2803-B should be amended to require any law enforcement agency using ALPR technology to submit its policy annually to the Board of Trustees of the Criminal Justice Academy for review for compliance with the model policy.

- Any state agency intending to use technology similar to ALPR's should develop a data collection, retention and disposal policy. ALPR-type data used for planning purposes should not be subject to Freedom of Information Act disclosure.

- The Commissioner of Public Safety should make periodic reports, as requested, to the relevant joint committees of the legislature relative to ALPR usage in the state.

- Public input should be actively sought for any ALPR policy changes at both the state and municipal level.

Appendix A

29-A MRSA, §2117-A, Chapter 605, PL 2010
Use Of Automated License Plate Recognition Systems

1. Definitions. As used in this section, unless the context otherwise indicates, "automated license plate recognition system" means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of registration plates into computer-readable data. "Automated license plate recognition system" does not include a photo-monitoring system, as defined in Title 23, section 1980, subsection 2- A, paragraph B, subparagraph (4), when used by the Maine Turnpike Authority or a law enforcement agency for toll enforcement purposes.

2. Prohibition. Except as otherwise provided in subsection 3, a person may not use an automated license plate recognition system.

3. Exception. Subsection 2 does not apply to:

A. The Department of Transportation for the purposes of protecting public safety and transportation infrastructure;

B. The Department of Public Safety, Bureau of State Police for the purposes of commercial motor vehicle screening and inspection; and

C. Any state, county or municipal law enforcement agency when providing public safety, conducting criminal investigations and ensuring compliance with local, state and federal laws. For purposes of this paragraph, an automated license plate recognition system may use only information entered by a law enforcement officer as defined by Title 17-A, section 2, subsection 17 and based on specific and articulable facts of a concern for safety, wrongdoing or a criminal investigation or pursuant to a civil order or records from the National Crime Information Center database or an official published law enforcement bulletin.

An authorized user under this subsection of an automated license plate recognition system may use an automated license plate recognition system only for the official and legitimate purposes of the user's employer.

4. Confidentiality. Data collected or retained through the use of an automated license plate recognition system in accordance with subsection 3 are confidential under Title 1, chapter 13 and are available for use only by a law enforcement agency in carrying out its functions or by an agency collecting information under subsection 3 for its intended purpose and any related civil or criminal proceeding.

A law enforcement agency may publish and release as public information summary reports using aggregate data that do not reveal the activities of an individual or firm and may share commercial motor vehicle screening data with the Federal Motor Carrier Safety Administration for regulatory compliance purposes.

5. Data retention. Data collected or retained through the use of an automated license plate recognition system in accordance with subsection 3 that are not considered intelligence and investigative information as defined by Title 16, section 611, subsection 8, or data collected for the purposes of commercial motor vehicle screening, may not be stored for more than 21 days.

6. Penalty. Violation of this section is a Class E crime.

Automated License Plate Recognition Working Group Membership

Matt	Dunlap	Secretary of State
Edward	Googins	South Portland Police Department and President of Maine Chiefs of Police Association
Frank	Clark	South Portland Police Department
Everett	Flannery	Maine Sheriff's Association and Chief Deputy of the Kennebec County Sheriff's Office
Catherine	Curtis	Deputy Secretary of State, Bureau of Motor Vehicles
Dennis	Damon	Senator, Maine Legislature
Brian	MacMaster	Dir. Investigations, Dept. of Attorney General
Anne	Jordan	Commissioner, Department of Public Safety
Stephen	Landry	Assistant Traffic Engineer, Department of Transportation
Shenna	Bellows	Executive Dir., Maine Civil Liberties Union
Alysia	Melnick	Public Policy Counsel, Maine Civil Liberties Union
Dan	Riley	Bernstein Shur for Federal Signal Corporation
Richard	Somerville	Maine Turnpike Authority
Richard	Trahey	Service Centers Coalition
Kathleen	McGee	Citizen
David	Guilmette	Bureau of Motor Vehicles
Garry	Hinkley	Bureau of Motor Vehicles
Nikki	Bachelder	Bureau of Motor Vehicles

Appendix B

LICENSE PLATE READERS

Model Policy

	Effective Date	*Number*
	August 2010	
Subject	**License Plate Readers**	
Reference		*Special Instructions*
Distribution	*Reevaluation Date*	*No. Pages*
	August 2011	**3**

I. PURPOSE

The purpose of this policy is to provide officers with guidelines on the proper use of license plate recognition (LPR) systems, also commonly known as license plate reader systems.

II. POLICY

The availability and use of LPR systems have provided many opportunities for the enhancement of productivity, effectiveness, and officer safety. It is the policy of this agency that all members abide by the guidelines set forth herein when using LPR systems.

III. ACRONYMS AND DEFINITIONS

FOUO: For Official Use Only

LPR: License Plate Recognition/License Plate Reader

OCR: Optical Character Recognition

Read: Digital images of license plates and vehicles and associated metadata (e.g., date, time, and geographic coordinates associated with the vehicle image capture) that are captured by the LPR system.

Alert: A visual and/or auditory notice that is triggered when the LPR system receives a potential "hit" on a license plate.

Hit: A read matched to a plate that has previously been registered on an agency's "hot list" of vehicle plates related to stolen vehicles, wanted vehicles, or other factors supporting investigation, or which has been manually registered by a user for further investigation.

Hot list: License plate numbers of stolen cars, vehicles owned by persons of interest, and vehicles associated with AMBER Alerts that are regularly added to "hot lists" circulated among law enforcement agencies. Hot list information can come from a variety of sources, including stolen vehicle information from the National Insurance Crime Bureau and the National Crime Information Center (NCIC), as well as national AMBER Alerts and Department of Homeland Security watch lists. Departments of motor vehicles can provide lists of expired registration tags, and law enforcement agencies can interface their own, locally compiled hot lists to the LPR system. These lists serve an officer safety function as well as an investigatory purpose. In addition to agency supported hot lists, users may also manually add license plate numbers to hot lists in order to be alerted if and when a vehicle license plate of interest is "read" by the LPR system.

Fixed LPR system: LPR cameras that are permanently affixed to a structure, such as a pole, a traffic barrier, or a bridge.

Mobile LPR system: LPR cameras that are affixed, either permanently (hardwired) or temporarily (e.g., magnet-mounted), to a law enforcement vehicle for mobile deployment.

Portable LPR system: LPR cameras that are transportable and can be moved and deployed in a variety of venues as needed, such as a traffic barrel or speed radar sign.

IV. PROCEDURES

A. General

1. The use of LPR systems is restricted to public safety–related missions of this agency.
2. LPR systems and associated equipment and databases are authorized for official public safety purposes. Misuse of this equipment and associated databases, or data, may be subject to sanctions and/or disciplinary actions.
3. LPR systems and LPR data and associated

media are the property of this agency and intended for use in conducting official business with limited exceptions noted elsewhere in this policy.

B. Administration

1. The agency shall designate an employee(s) with administrative oversight for LPR system deployment and operations who is (are) responsible for the following:
   a. Establishing protocols for access, collection, storage, and retention of LPR data and associated media files
   b. Establishing protocols to preserve and document LPR reads and "alerts" or "hits" that are acted on in the field or associated with investigations or prosecutions
   c. Establishing protocols to establish and ensure the security and integrity of data captured, stored, and/or retained by the LPR system
   d. Ensuring the proper selection of the personnel approved to operate the LPR system and maintaining an adequate number of trainees;
   e. Maintaining records identifying approved LPR deployments and documenting their results, including appropriate documentation of significant incidents and arrests that are related to LPR usage
   f. Authorizing any requests for LPR systems use or data access according to the policies and guidelines of this agency
2. Designated, trained personnel shall check equipment on a regular basis to ensure functionality and camera alignment. Any equipment that falls outside expected functionality shall be removed from service until deficiencies have been corrected.
3. LPR systems repairs, hardware or software, shall be made by agency authorized sources.

C. License Plate Reader System Usage

1. LPR operation and access to LPR collected data shall be for official agency purposes only.
2. Only officers who have been properly trained in the use and operational protocols of the LPR systems shall be permitted to use it.
3. At the start of each shift users must ensure that the LPR system has been updated with the most current hot lists available.
4. LPR Alerts/Hits: Prior to initiation of the stop:
   a. Visually verify that the vehicle plate number matches the plate number run by the LPR system, including both alphanumeric characters of the license plate and the state of issuance.
   b. Verify the current status of the plate through dispatch or MDT query when circumstances allow.
5. In each case in which an alert or a hit is triggered, the user should record the disposition of the alert and the hit into the LPR system
6. Hot lists may be updated manually if the user enters a specific plate into the LPR system and wants to be alerted when that plate is located. Whenever a plate is manually entered into the LPR system, the officer should document the reason.
7. Special Details: LPR use during nontraditional deployments (e.g., special operations or during a criminal investigation) must be approved by the administrator.
8. Searches of historical data within the LPR system should be done in accordance with established departmental policies and procedures.

D. LPR Data Sharing and Dissemination

LPR data should be considered FOUO and can be shared for legitimate law enforcement purposes:

1. When LPR data are disseminated outside the agency, it should be documented in a secondary dissemination log.
2. Information sharing among agencies should be dictated in accordance with MOUs (memoranda of understanding) or established departmental policies.

E. Retention

Please refer to the *License Plate Reader Concepts and Issues Paper* for a discussion on retention.

Acknowledgment

This *Model Policy* was developed by the International Association of Chiefs of Police (IACP) Law Enforcement Information Management (LEIM) Section, in cooperation with the IACP National Law Enforcement Policy Center. Additional support was provided by the LPR Model Policy Working Group, to whom we are deeply appreciative for sharing their agency policies and expertise.

Every effort has been made by the IACP National Law Enforcement Policy Center staff and advisory board to ensure that this model policy incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no "model" policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities among other factors.

This project was supported by Grant No. 2006-DG-BX-K004 awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program offices and bureaus: the Bureau of Justice Assistance, the Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and the Office of Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice or the IACP.

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Appendix C

An Act Relating to Automatic License Plate Recognition Policies

Section 1. 25 MRSA § 2803-B as amended by C. 652, PL 2009, is further amended as follows:

1. Law enforcement policies. All law enforcement agencies shall adopt written policies regarding procedures to deal with the following:

A. Use of physical force, including the use of electronic weapons and less-than-lethal munitions;

B. Barricaded persons and hostage situations;

C. Persons exhibiting deviant behavior;

D. Domestic violence, which must include, at a minimum, the following:

(1) A process to ensure that a victim receives notification of the defendant's release from jail;

(2) A process for the collection of information regarding the defendant that includes the defendant's previous history, the parties' relationship, the name of the victim and a process to relay this information to a bail commissioner before a bail determination is made; and

(3) A process for the safe retrieval of personal property belonging to the victim or the defendant that includes identification of a possible neutral location for retrieval, the presence of at least one law enforcement officer during the retrieval and giving the victim the option of at least 24 hours notice to each party prior to the retrieval;

E. Hate or bias crimes;

F. Police pursuits;

G. Citizen complaints of police misconduct;

H. Criminal conduct engaged in by law enforcement officers;

I. Death investigations, including at a minimum the protocol of the Department of the Attorney General regarding such investigations;

J. Public notification regarding persons in the community required to register under Title 34-A, chapter 15;

K. Digital, electronic, audio, video or other recording of law enforcement interviews of suspects in serious crimes and the preservation of investigative notes and records in such cases; and

L. Mental illness and the process for involuntary commitment.

<u>M. Automated License Plate Recognition Systems, if an agency elects to use such a system.</u>

For purposes of this section, "Automated License Plate Recognition System" means a device that uses a camera or optical character reader and computer technology to capture digital images of license plates and to compare images to a database of plates of interest."

The chief administrative officer of each agency shall certify to the board that attempts were made to obtain public comment during the formulation of policies.

2. Minimum policy standards. The board shall establish minimum standards for each law enforcement policy no later than June 1, 1995, except that policies for expanded requirements for domestic violence under subsection 1, paragraph D, subparagraphs (1) to (3) must be established no later than January 1, 2003; policies for death investigations under subsection 1, paragraph I must be established no later than January 1, 2004; policies for public notification regarding persons in the community required to register under Title 34- A, chapter 15 under subsection 1, paragraph J must be established no later than January 1, 2006; policies for the recording and preservation of interviews of suspects in serious crimes under subsection 1, paragraph K must be established no later than January 1, 2005; policies for the expanded use of physical force, including the use of electronic weapons and less-than-lethal munitions under subsection 1, paragraph A, must be established no later than January 1, 2010; ~~and~~ policies for mental illness and the process for involuntary commitment under subsection 1, paragraph L must be established no later than January 1, 2010; and policies for the use of automated license plate recognition systems under subsection 1, paragraph M must be established no later than July 1, 2012.

3. Agency compliance. The chief administrative officer of each law enforcement agency shall certify to the board no later than January 1, 1996 that the agency has adopted written policies consistent with the minimum standards established by the board pursuant to subsection 2, except that certification to the board for expanded policies for domestic violence under subsection 1, paragraph D, subparagraphs (1) to (3) must be made to the board no later than June 1, 2003; certification to the board for adoption of a death investigation policy under subsection 1, paragraph I must be made to the board no later than June 1, 2004; certification to the board for adoption of a public notification policy under subsection 1, paragraph J must be made to the board no later than June 1, 2006; certification to the board for adoption of a policy for the recording and preservation of interviews of suspects in serious crimes under subsection 1, paragraph K must be made to the board no later than June 1, 2005; certification to the board for adoption of an expanded use of physical force policy under subsection 1, paragraph A must be made to the board no later than June 1, 2010; and certification to the board for adoption of a policy regarding mental illness and the process for involuntary commitment under subsection 1, paragraph L must be made to the board no later than June 1, 2010. The certification must be accompanied by copies of the agency policies. The chief administrative officer of each agency shall certify to the board no later than June 1, 1996 that the agency has provided orientation and training for its members with respect to the policies, except that certification for orientation and training with respect to expanded policies for domestic violence under subsection 1, paragraph D, subparagraphs (1) and (3) must be made to the board no later than January 1, 2004; certification for orientation and training with respect to policies regarding death investigations under subsection 1, paragraph I must be made to the board no later than January 1, 2005; certification for orientation and training with respect to policies regarding public notification under subsection 1, paragraph J must be made to the board no later than January 1, 2007; certification for orientation and training with respect to policies regarding the recording and

preservation of interviews of suspects in serious crimes under subsection 1, paragraph K must be made to the board no later than January 1, 2006; certification for orientation and training with respect to policies regarding expanded use of physical force under subsection 1, paragraph A must be made to the board no later than January 1, 2011; ~~and~~ certification for orientation and training with respect to policies regarding mental illness and the process for involuntary commitment under subsection 1, paragraph L must be made to the board no later than January 1, 2011; and certification for orientation and training with respect to policies regarding automated license plate recognition systems under subsection 1, paragraph M, prior to implementing such a system.

4. Penalty.

5. Annual standards review. The board shall review annually the minimum standards for each policy to determine whether changes in any of the standards are necessary to incorporate improved procedures identified by critiquing known actual events or by reviewing new enforcement practices demonstrated to reduce crime, increase officer safety or increase public safety.

6. Freedom of access. The chief administrative officer of a municipal, county or state law enforcement agency shall certify to the board annually beginning on January 1, 2004 that the agency has adopted a written policy regarding procedures to deal with a freedom of access request and that the chief administrative officer has designated a person who is trained to respond to a request received by the agency pursuant to Title 1, chapter 13.

7. Certification by record custodian. Notwithstanding any other law or rule of evidence, a certificate by the custodian of the records of the board, when signed and sworn to by that custodian, or the custodian's designee, is admissible in a judicial or administrative proceeding as prima facie evidence of any fact stated in the certificate or in any documents attached to the certificate.

Summary

This legislation is based on the recommendations of the Automated License Plate Recognition Working Group authorized by Chapter 605, PL 2010. The bill would require any law enforcement agency using ALPR's to develop a usage policy based on standards approved by the Maine Criminal Justice Academy. The MCJA must establish minimum standards for the use of ALPR's.

58, 62

Fouts, Henry

From: Nale, Craig
Sent: Wednesday, October 05, 2016 8:23 AM
To: Fouts, Henry
Subject: FW: RTKAC Subcommittee items
Attachments: cf125-LD-1489.pdf; cf127-LD-0818.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

From: StGermain, Shaun A [mailto:Shaun.A.StGermain@maine.gov]
Sent: Tuesday, October 04, 2016 5:20 PM
To: Nale, Craig
Cc: Parr, Christopher
Subject: RE: RTKAC Subcommittee items

Craig,
I've asked Katie Johnson for her input on your questions. Attached is some information regarding the confidentiality provision in the EMS Act.

I'll try answering your questions as best I can for your session tomorrow.

> "all proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the [Emergency Medical Services 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."
>
> Much of this may have to do with the potential for information gained from the QA process being used against the provider in litigation. In addition to that, the QA process is a difficult one to approach, and many providers are hesitant to engage in the process if they feel threatened, either by the threat of litigation or through the loss of professional stature. Furthermore, QA is meant to be instructive rather than punitive. It is this approach the enables us to gather accurate information. Anything warranting a deeper look (i.e. harm to a patient), then our investigations committee would look at the situation and proceed. All investigation decisions are made public upon final dispensation.
>
> Ref #62 is also within 32 MRSA § 91-B(1), but includes only ¶D. This exception makes examination questions used by the Emergency Medical Services Board to fulfill cognitive testing requirements (required by 32 MRSA § 85(3)(C)). A concern with the exception is whether those questions need to be confidential when applicants might find them useful for preparing for the exam (like bar applicants use old bar exam questions to study).
>
> In order to protect the integrity of the exam process, we keep all exams confidential. The questions themselves do not necessarily change from year to year. This policy is consistent with the National Registry of Emergency Medical Technicians, which is where much of our exam material originates.

I hope this helps. I would be happy to speak with you further if you like. I'll be in our Board meeting by 9:30, but will have email available.

Regards,
Shaun

From: Parr, Christopher
Sent: Monday, October 03, 2016 12:15 PM
To: StGermain, Shaun A
Subject: RE: RTKAC Subcommittee items
Importance: High

Hi, Shaun:

Could you please contact Craig Nale re: his inquiries below? (I've highlighted the relevant, MEMS-related inquiries.)

Please don't hesitate to let me know if you wish to discuss.

C

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From: Parr, Christopher
Sent: Wednesday, September 28, 2016 7:45 AM
To: Nale, Craig; StGermain, Shaun A
Cc: Scott, Brian P
Subject: RE: RTKAC Subcommittee items
Importance: High

Craig:

Thanks for the email.

With this email I am forwarding your email below to Shaun St. Germain, Director of Maine Emergency Medical Services here at DPS. He is best able to respond to paragraphs 2 and 3 of your query.

Point of clarification: Is there a question with regard to paragraph 1?

C

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From: Nale, Craig [mailto:Craig.Nale@legislature.maine.gov]
Sent: Tuesday, September 27, 2016 3:10 PM
To: Parr, Christopher
Subject: RTKAC Subcommittee items

Hi Chris,

At the last RTKAC Subcommittee meeting members had some additional questions or concerns about three provisions affecting DPS: Ref ## 57, 58 and 62.

Ref #57 is at 29-A MRSA § 2117-A(4). It makes data collected by an automated license plate recognition system confidential and available for use only by a law enforcement agency; DOT for protecting public safety and transportation infrastructure; and DPS/State Police for commercial motor vehicle screening and inspection. The exception does allow a law enforcement agency to publish aggregate data and to share commercial motor vehicle screening data for federal regulatory compliance purposes. Subcommittee members were concerned about the balance of confidentiality and public access because DPS did not take a position on whether the exception should be continued. Members asked that we reach out to DOT, BMV and commercial trucking representatives for further input, which I am doing.

Ref #58 is at 32 MRSA § 91-B(1). There are several exceptions in the opening paragraph and in paragraphs A-D below it, but the exception the Subcommittee is seeking further information on here is in the first sentence. The first sentence provides that "all proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the [Emergency Medical Services 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." Subcommittee members were concerned about the breadth of this exception, and especially with the confidentiality of reports, information and records provided to the Board.

Ref #62 is also within 32 MRSA § 91-B(1), but includes only ¶D. This exception makes examination questions used by the Emergency Medical Services Board to fulfill cognitive testing requirements (required by 32 MRSA § 85(3)(C)). A concern with the exception is whether those questions need to be confidential when applicants might find them useful for preparing for the exam (like bar applicants use old bar exam questions to study).

If I can help explain these any further or reach out to additional interested groups for some information please just let me know. Thanks again for all your help with these.

Craig

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Right to Know Advisory Committee
Subcommittee on Review of Existing Public Records Exceptions
***DRAFT* Proposed Bill to Implement the Recommendation of the Efficiency Maine Trust**

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. 35-A MRSA §10106, sub-§1, ¶A is amended to read:

A. A record obtained or developed by the trust that:

(1) A person, including the trust, to whom the record belongs or pertains has requested be designated confidential~~;~~ and that the director has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains; or

~~(2) The board has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains;~~

~~(3)~~ (2) Contains information about the energy usage profile of an identifiable customer of a transmission and distribution utility in the State or an identifiable customer of a distributor of heating fuel or other energy source; and

~~(4) Contains the social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the trust; and~~

The social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the trust is confidential.

Sec. 2. 35-A MRSA §10106, sub-§3 is amended to read:

3. Disclosure prohibited; further exceptions. The director or a trustee, officer, employee, agent, other representative of the trust or other person may not knowingly divulge or disclose records designated confidential by this section, except that the ~~board~~ director, in ~~it's~~ the director's discretion and in conformity with legislative freedom of access criteria in Title 1,

chapter 13, subchapter 1-A, may make or authorize any disclosure of information of the following types or under the following circumstances:

SUMMARY

This bill changes the criteria for designation of records of the Efficiency Maine Trust as confidential from requiring that each of four criteria be met to instead require that one of two criteria be met, including: that a person to whom the record belongs has requested it be designated confidential and the director of the Efficiency Maine Trust Board has determined the record contains proprietary information, access to which would result in some competitive disadvantage to any person to whom the record belongs or pertains; or that the record contains information about the energy usage profile of an identifiable individual. The bill provides that the social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the Efficiency Maine Trust is confidential. This bill also provides that the director of the Efficiency Maine Trust, instead of the Board of the Efficiency Maine Trust, may disclose or authorize disclosure of otherwise confidential information in certain specified circumstances.