

**§432. Exceptions to public records; review**

**1. Recommendations.** During the second regular session of each Legislature, the review committee may report out legislation containing its recommendations concerning the repeal, modification and continuation of public records exceptions and any recommendations concerning the exception review process and the accessibility of public records. Before reporting out legislation, the review committee shall notify the appropriate committees of jurisdiction concerning public hearings and work sessions and shall allow members of the appropriate committees of jurisdiction to participate in work sessions.

[PL 2011, c. 320, Pt. D, §1 (AMD).]

**2. Process of evaluation.** According to the schedule in section 433, the advisory committee shall evaluate each public records exception that is scheduled for review that biennium. This section does not prohibit the evaluation of a public record exception by either the advisory committee or the review committee at a time other than that listed in section 433. The following criteria apply in determining whether each exception scheduled for review should be repealed, modified or remain unchanged:

- A. Whether a record protected by the exception still needs to be collected and maintained; [PL 2003, c. 709, §3 (NEW).]
  - B. The value to the agency or official or to the public in maintaining a record protected by the exception; [PL 2003, c. 709, §3 (NEW).]
  - C. Whether federal law requires a record to be confidential; [PL 2003, c. 709, §3 (NEW).]
  - D. Whether the exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records; [PL 2003, c. 709, §3 (NEW).]
  - 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; [PL 2003, c. 709, §3 (NEW).]
  - 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; [PL 2003, c. 709, §3 (NEW).]
  - 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; [PL 2003, c. 709, §3 (NEW).]
  - G-1. Whether public access to the record ensures or would ensure that members of the public are able to make informed health and safety decisions; [PL 2021, c. 313, §8 (NEW).]
  - H. Whether the exception is as narrowly tailored as possible; and [PL 2003, c. 709, §3 (NEW).]
  - I. Any other criteria that assist the review committee in determining the value of the exception as compared to the public's interest in the record protected by the exception. [PL 2003, c. 709, §3 (NEW).]
- [PL 2021, c. 313, §8 (AMD).]

**2-A. Accountability review of agency or official.** In evaluating each public records exception, the advisory 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.

[PL 2005, c. 631, §3 (NEW).]

**2-B. Recommendations to review committee.** The advisory committee shall report its recommendations under this section to the review committee no later than the convening of the second regular session of each Legislature.  
[PL 2005, c. 631, §3 (NEW).]

**2-C. Accessibility of public records.** The advisory committee may include in its evaluation of public records statutes the consideration of any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.  
[PL 2011, c. 320, Pt. D, §2 (NEW).]

**3. Assistance from committees of jurisdiction.** The advisory committee may seek assistance in evaluating public records exceptions from the joint standing committees of the Legislature having jurisdiction over the subject matter related to the exceptions being reviewed. The advisory committee may hold public hearings after notice to the appropriate committees of jurisdiction.  
[PL 2005, c. 631, §3 (AMD).]

#### SECTION HISTORY

PL 2003, c. 709, §3 (NEW). PL 2005, c. 631, §3 (AMD). PL 2011, c. 320, Pt. D, §§1, 2 (AMD).  
PL 2021, c. 313, §8 (AMD).

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