

RIGHT TO KNOW ADVISORY COMMITTEE

Law Enforcement Records Subcommittee

Monday, November 13, 2023 at 11:00 a.m.

Location: State House, Room 438 (JUD Committee Room)

Public access also available through the Maine Legislature's livestream:

<https://legislature.maine.gov/Audio/#438>

Subcommittee topics:

1. The Intelligence and Investigative Record Information Act (IIRIA) ([16 M.R.S. §804\(3\)](#)) provides that information in intelligence and investigative records is confidential if there is a “reasonable possibility that public release or inspection of the record would . . . Constitute an unwarranted invasion of personal privacy.” The subcommittee will consider whether to recommend amending the law to define the circumstances under which the person whose personal privacy might be invaded, or that person’s representative if the person is incapacitated, may consent to release of the information.
2. Whether to make recommendations regarding prompt release by law enforcement of information about a public safety incident or criminal investigation that occurs on a weekend, without the delays incident to submitting formal FOIA requests.

AGENDA

1. Subcommittee Member Introductions

2. Public Comment on Subcommittee Topics

3. Additional Information on Subcommittee Topics

- a. Topic #1: CLAC-led reorganization of IIRIA and relationship between IIRIA and federal FOIA
- b. Topic #2: Sample law enforcement media relations policies

4. Subcommittee Discussion:

Whether to recommend legislation to address either or both subcommittee topics.

5. Next Steps

- Third meeting date?

6. Adjourn

Recall that the full RTKAC meets:

- *Monday, December 4th @ 1 pm*

Right to Know Advisory Committee
Law Enforcement Records Subcommittee
October 23, 2023 (Hybrid: Zoom and Room 438)
Meeting Summary

Convened 3:34 pm in person and remote on Zoom; public access on Legislature's website at:
<https://legislature.maine.gov/audio/#438?event=89618&startDate=2023-10-23T15:00:00-04:00>

Attendees: (P=attended in person; R=attended remotely via Zoom)

Senator Anne Carney, Chair (P)

Amy Beveridge (R)

AAG Jonathan Bolton (P)

Julie Finn (R)

Chief Michael Gahagan (R)

Cheryl Saniuk-Heinig (R)

Judy Meyer (P)

Tim Moore (P)

Absent: Betsy Fitzgerald

Staff: Janet Stocco & Anne Davison

Welcome and subcommittee member introductions

Senator Anne Carney, the chair of the subcommittee, convened the meeting and briefly introduced the two topics that have been referred to the subcommittee by the full Advisory Committee.

1. The Intelligence and Investigative Record Information Act ([16 M.R.S. §804\(3\)](#)) (IIRIA) currently provides that information in intelligence and investigative records is confidential if there is a "reasonable possibility that public release or inspection of the record would . . . constitute an unwarranted invasion of personal privacy." The subcommittee will consider whether to recommend amending the law to define the circumstances under which the person whose personal privacy might be invaded, or that person's representative if the person is incapacitated, may consent to release of the information.
2. Whether to make recommendations regarding prompt release by law enforcement of information about a public safety incident or criminal investigation that occurs on a weekend, without the delays incident to submitting formal FOAA requests.

Subcommittee Members then introduced themselves.

Subcommittee Topic #1: IIRIA

Background information

Background materials for subcommittee topic #1 were distributed to subcommittee members by email prior to the meeting and posted on the subcommittee's publicly accessible webpage.

Staff reviewed a memorandum providing brief overview of the Intelligence and Investigative Record Information Act (IIRIA), which currently requires that a Maine criminal justice agency treat as confidential and not disseminate a record containing intelligence and investigative record information if there is a reasonable possibility that public release or inspection of the record would constitute an unwarranted invasion of personal privacy. During the First Special Session, the Judiciary Committee considered LD 1203, which among other things would have amended the IIRIA to authorize a Maine

criminal justice agency to disclose intelligence and investigative records despite a reasonable possibility that the disclosure would constitute an unwarranted invasion of personal privacy with either the consent of the individual who is the subject of the record or, if that individual is deceased, incapacitated or a minor, with the consent of the individual's "family or household member" as defined in the State's protection from abuse laws. The Judiciary Committee did not move forward with the bill and instead requested that the Advisory Committee study the issue further to determine: whether to authorize an individual whose personal privacy might be invaded to consent to release of the record; whether the individual's status as a suspect, victim, witness or bystander should affect their authority to consent; whether each individual whose personal privacy might be invaded must consent to the record's release; and who, if anyone, should have the authority to consent to release of the record if the individual whose personal privacy is implicated has died or is incapacitated.

As an initial observation, Amy Beveridge expressed concern that, if a dashcam or bodycam video recording is made of an incident occurring in a public place, it should not be possible for a suspect or bystander to prevent public access to the video on privacy grounds. To the extent any privacy interests remain in a public space, it is preferable to focus on blurring certain individuals' faces or redacting portions of the video, rather than preventing access to the video in its entirety.

Law enforcement perspective

Jonathan Bolton, Assistant Attorney General and subcommittee member, and Paul Cavanaugh, Staff Attorney for the Maine State Police, were then invited to comment on the two subcommittee topics from a law enforcement perspective.

AAG Bolton focused on the first topic, observing that the confidentiality provisions within §804 of the IIRIA largely mirror provisions of the federal Freedom of Information Act, including by rendering law enforcement investigative records confidential if their release would constitute an unwarranted invasion of personal privacy. Federal caselaw can therefore assist law enforcement agencies and state courts in interpreting the scope of Maine's analogous confidentiality provision. For example, federal courts recognize the important privacy interest an individual has in not being associated with a criminal investigation. For this reason, law enforcement often redacts the names of individuals whenever it releases copies of police reports to the media. Caselaw also suggests, however, that an individual who voluntarily speaks to the media about the incident may have waived their privacy interest, rendering disclosure of the relevant records "warranted" under FOIA and the IIRIA. Proposals to amend IIRIA will not only diminish the applicability of federal case precedent when interpreting the IIRIA, but will also cause several practical issues for law enforcement, including determining who has the authority to consent to the release of records that involve multiple individuals. If a representative of the media wishes to obtain a copy of a record, will that person be required to provide consents from every individual whose personal privacy might be implicated by that record? How will the media, who does not have access to the record, know whose consent should be submitted with the public records request? Requiring law enforcement officers to track down all affected individuals in response to a public records request will place a large burden on already strained law enforcement resources.

In addition to providing written remarks outlining concerns from the Maine State Police on the two subcommittee topics, Staff Attorney Paul Cavanaugh orally emphasized that the IIRIA currently requires law enforcement to balance whether the invasion of personal privacy caused by the release of particular intelligence and investigative record information is warranted in each case. To some degree,

this requires an examination of the public interest served by release of the record. Generally speaking, the public interest is served by allowing the public to examine the conduct of the government and ferret out potential wrongdoing. By contrast, LD 1203 proposed to categorically allow the “subject of the record” to consent to the release of intelligence and investigative record information, without explaining who qualifies as the “subject of the record” and whether that person may consent to the release in order to profit from the information released or for other, non-public purposes. Like AAG Bolton, Staff Attorney Cavanaugh expressed concerns about the practical difficulty in collecting consents from multiple people as well as the process that law enforcement should use to verify consents submitted by others as part of a public records request. Moreover, the proposal to allow family members to consent to the release of records involving a minor could lead to situations where different family members disagree on whether records should be released. For example, a parent suspected of abducting a child might wish to consent to release of records revealing the details of the investigation. Under the language of LD 1203, not only could that parent consent to release of the records but that parent’s current spouse or another person with an attenuated relationship to the child might be able to authorize release of the investigative records. Staff Attorney Cavanaugh again emphasized that under LD 1203, law enforcement must release the records after receiving the consent without inquiring about the motives of the person who seeks the information. Depending on who is the target of the investigation, these outcomes could conflict with §808 of the IIRIA, which establishes that the subject of intelligence and investigative record information has no right to inspect or review that information for accuracy or completeness. As an alternative to the proposal in LD 1203, Staff Attorney Cavanaugh noted that §805(4) of the IIRIA currently authorizes disclosure to a court of information made confidential under §804. It may be preferable for individuals seeking access to intelligence and investigative records to pursue access through courts, which have the ability to redact sensitive information and craft orders limiting further dissemination of information that invades personal privacy.

Media Perspective

Next, subcommittee members Judy Meyer and Amy Beveridge and Advisory Committee member Tim Moore were invited to comment on these topics from the perspective of the media, including broadcasting and newspaper interests.

Judy Meyer agreed with AAG Bolton that it might be detrimental to amend §804(3) of the IIRIA in a way that deviates from the analogous provision of federal FOIA because it will limit the ability of parties and the courts to use federal caselaw to help interpret the statute. She further cautioned that the Criminal Law Advisory Committee (CLAC) recently studied and rewrote the IIRIA statutes and suggested that the subcommittee research why CLAC recommended retaining the personal privacy language in §804(3) as part of that project. As a representative of the media, however, Judy Meyer also agreed with Amy Beveridge’s observation that it is difficult to understand what personal privacy interests are protected by denying public access to a dashcam video recording of an incident occurring on a public street. A different analysis might apply, however, to a request for release of a bodycam video recording of an incident occurring in an apartment or home where privacy interests are heightened.

Judy Meyer noted that the media has greater concerns with the way law enforcement interprets §804(1) of the IIRIA, which renders otherwise public records confidential if they might interfere with law enforcement investigations. This provision of the law has been used to deny public access to records including video recordings of incidents that occurred in public, accident reports, portions of police

reports and other records based solely on whether an investigation is ongoing. Yet, if no investigation is ongoing (for example, if the suspect has died), then all of that information would be considered public.

Subcommittee Topic #2: Timely access to information from law enforcement

Media perspective

Amy Beveridge provided the subcommittee with more context for the second subcommittee topic: the delay that can occur in providing the public and the media with basic information about an incident, including where and when a potential crime occurred and a general sense of the nature of the investigation, especially on the weekends. It is important for the public to know about incidents as they occur, especially when there either is an ongoing danger to the public or when the public is worried about the potential for an ongoing danger. Tim Moore echoed Amy Beveridge's concerns with media and public access to information from law enforcement on the weekends when serious incidents, like murder, occur on the weekends.

Law enforcement perspective

Senator Carney invited Staff Attorney Paul Cavanaugh to respond to this concern. He explained that the issue is not related to the freedom of access laws, it is a resource issue. While the Maine State Police and a few of the larger local police departments in the State have designated Public Information Officers who are available on the weekends, most law enforcement agencies do not have public information officers. Law enforcement's first priority is limiting public safety threats and conducting investigations, which does not always afford time to pause and write press releases about ongoing investigations. Chief Michael Gahagan agreed that smaller law enforcement agencies do not have public information officers. Indeed, in his department, if he is unavailable, the city manager fills that role and is unavailable on weekends.

Next Steps and Future Subcommittee Meetings

Senator Carney confirmed that the next subcommittee meeting is scheduled to take place on Thursday, November 9, 2023 at 1 pm in the Judiciary Committee Room of the State House. At that meeting, the subcommittee will focus its discussion on whether to recommend revisions to the IIRIA as outlined in subcommittee topic #1 or whether to make any recommendations for amending the freedom of access laws to address subcommittee topic #2.

In preparation for that meeting, Judy Meyer reiterated her request for more information on CLAC's past comprehensive rewrite of the IIRIA and how that informs the subcommittee's work on topic #1. With respect to subcommittee topic #2, Senator Carney requested that staff provide information on any state statutes outside of the Freedom of Access Act and IIRIA governing the timing of law enforcement release of information to the public and the media. Because Chief Michael Gahagan is not able to attend the next subcommittee meeting, Senator Carney may invite a representative of a smaller law enforcement agency who does not have a public information officer to provide additional perspective on these topics.

The meeting adjourned at 4:58 p.m.



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MEMORANDUM

TO: RTKAC – Law Enforcement Records Subcommittee
FROM: Janet Stocco, Legislative Analyst / Subcommittee Staff
DATE: November 9, 2023
RE: **Intelligence and Investigative Record Information Act: Additional Information**

A. 2013 Statutory Reorganization by Criminal Law Advisory Commission (CLAC)

Prior to 2013, criminal history record information and intelligence and investigative record information were both governed by the former Criminal History Record Information Act within Title 16, chapter 3, subchapter 8. In 2013, after “over 2 years of intensive work” reviewing this “confusing and impenetrable” Act, the Criminal Law Advisory Commission (CLAC) submitted a bill that proposed to split the Act into two separate chapters of law:

- Title 16, chapter 7, the new Criminal History Record Information Act, which would govern the dissemination of information by a criminal justice agency about a defendant’s formal involvement in the criminal justice system after having been accused of or convicted of an offense; and
- Title 16, chapter 9, the Intelligence and Investigative Record Information Act (IIRIA), which would govern the dissemination of information by a criminal justice agency related to the anticipation, prevention, detection, monitoring or investigation of known or suspected crimes and civil violations.

CLAC’s bill, LD 1493, An Act To Revise the Laws Concerning Criminal History Record Information and Intelligence and Investigative Information, was accompanied by a lengthy summary explaining the organizational structure of the bill. LD 1493 primarily reorganized the existing law, but it did include a few substantive changes to the law as was explained in a memorandum from former CLAC member Special Assistant Attorney General Charles K. Leadbetter. Neither the original bill summary nor the memo from AAG Leadbetter highlights §804(3), the provision of the IIRIA that makes intelligence and investigative record information confidential “if there is a reasonable probability that public release or inspection of the record would . . . constitute an unwarranted invasion of privacy,” or the relationship between the IIRIA confidentiality provisions in §804 and the federal Freedom of Information Act.

After a few minor amendments were proposed by the Criminal Justice and Public Safety Committee and adopted by the Legislature, LD 1493 was enacted as Public Law 2013, chapter 267.

B. Comparison of the confidentiality of investigative records under federal and state law

The subcommittee has been tasked with examining whether to recommend amendments to §804 of the state IIRIA, which establishes as a general rule that intelligence and investigative record information in the possession of a criminal justice agency must be kept confidential and not disclosed “if there is a reasonable possibility that public release or inspection of the record” would cause any one of 11 enumerated harms, including interference with a law enforcement proceeding related to crimes or causing an unwarranted invasion of privacy. *See* §804(1) and (4). [Recall that intelligence and investigative record information that would be rendered confidential under §804 of the state IIRIA may nevertheless be disclosed by a criminal justice agency to one of the recipients specified in either §805 or §806 of the IIRIA, if the requirements of those sections are met. In addition, under §806-A, portions of videos in the custody of the Attorney General depicting the use of deadly force by law enforcement may be disclosed if the public interest in the evaluation of the use of deadly force by the public and the review of those incidents by the Attorney General outweighs the harms contemplated in §804.]

As Judy Meyer and Jonathan Bolton explained during the October subcommittee meeting, the list of reasons in §804 of the state IIRIA for keeping intelligence and investigative record information confidential is quite similar to the list of reasons for keeping “records or information compiled for law enforcement purposes” confidential under the federal Freedom of Information Act (FOIA). Indeed, the Maine Law Court considers federal caselaw interpreting FOIA as persuasive precedent when interpreting the provisions of §804 of the IIRIA. *See, e.g., Blethen Maine Newspapers v. State*, 2005 ME 56, ¶13. Specifically, 5 U.S.C. §552(b)(7) provides that FOIA does not require public disclosure of:

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual [.]

The table below compares the relevant confidentiality provisions of the IIRIA and FOIA for investigative records.

State IIRIA – 16 M.R.S. §804	Federal FOIA – 5 U.S.C. §552(b)
“[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 <i>reasonable possibility</i> that public release or inspection of the record would”	“[FOIA] does not apply to matters that are— ... (7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information”
“(1) . . . Interfere with law enforcement proceedings relating to crimes;”	“(A) could reasonably be expected to interfere with enforcement proceedings,”
“(2) . . . Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution’s evidence that will interfere with the ability of a court to impanel an impartial jury;”	“(B) would deprive a person of a right to a fair trial or an impartial adjudication,”

“(3) . . . Constitute an unwarranted invasion of personal privacy;”	“(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,”
“(4) . . . Disclose the identity of a confidential source;”	“(D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis ...”
“(5) . . . Disclose confidential information furnished only by a confidential source;”	“(D) [continued from above] . . . and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,”
“(6) . . . Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information, by the Department of the Attorney General or by a district attorney’s office;”	<i>Note: the FOIA analog to §804(6) is not limited to law enforcement records. Instead, under §552(b)(4):</i> “[FOIA] does not apply to matters that are . . . (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential”
“(7) . . . Disclose investigative techniques and procedures or security plans and procedures not known by the general public;”	“(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or”
“(8) . . . Endanger the life or physical safety of any individual, including law enforcement personnel;”	“(F) could reasonably be expected to endanger the life or physical safety of any individual;”
“(9) . . . Disclose information designated confidential by statute;	<i>Note: the FOIA analog to §804(6) is not limited to law enforcement records. Instead, under §552(b)(3):</i> “[FOIA] does not apply to matters that are . . . (3) specifically exempted from disclosure by statute (other than section 552b of this title), if that statute— (A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after . . . the OPEN FOIA Act of 2009, specifically cites to this paragraph.”
“(10) . . . Interfere with proceedings relating to civil violations, civil enforcement proceedings and other civil proceedings conducted by the Department of the Attorney General or by a district attorney’s office;”	“(A) could reasonably be expected to interfere with enforcement proceedings,”
“(11) . . . Disclose conduct of or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;”	<i>There is no specific FOIA exemption for settlement negotiation or mediation information. (There is some debate among scholars and federal courts whether this type of information is confidential under FOIA.)</i>
“(12) . . . Identify the source of a complaint made to the Department of the Attorney General regarding a violation of consumer or antitrust laws.”	<i>There is no provision within FOIA itself regarding the identity of non-confidential informants/complainants.</i>

Title 25: INTERNAL SECURITY AND PUBLIC SAFETY
Part 8: MAINE CRIMINAL JUSTICE ACADEMY
Chapter 341: THE MAINE CRIMINAL JUSTICE ACADEMY

§2803-B. Requirements of law enforcement agencies

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; [PL 2009, c. 336, §18 (AMD).]
- B. Barricaded persons and hostage situations; [PL 1993, c. 744, §5 (NEW).]
- C. [PL 2013, c. 147, §16 (RP).]
- 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, whether the commission of an alleged crime included the use of strangulation as defined in Title 17-A, section 208, subsection 1, paragraph C, the name of the victim and a process to relay this information to a bail commissioner before a bail determination is made;
 - (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;
 - (4) Standard procedures to ensure that protection from abuse orders issued under Title 19-A, section 4108 or 4110 are served on the defendant as quickly as possible;
 - (5) A process for the administration of a validated, evidence-based domestic violence risk assessment recommended by the Maine Commission on Domestic and Sexual Abuse, established in Title 5, section 12004-I, subsection 74-C, and approved by the Department of Public Safety and the conveyance of the results of that assessment to the bail commissioner, if appropriate, and the district attorney for the county in which the domestic violence occurred; and
 - (6) A process to ensure that, when a person files multiple, separate complaints regarding the behavior of another person that may indicate a course of conduct constituting stalking, as defined in Title 17-A, section 210-A, those complaints are reviewed together to determine if the other person has engaged in stalking under Title 17-A, section 210-A; [PL 2023, c. 235, §§6-8 (AMD).]
- E. Hate or bias crimes. A policy adopted under this paragraph must include a policy statement that prohibits stops, detentions, searches or asset seizures and forfeitures efforts based on race, ethnicity, gender, sexual orientation, gender identity, religion, socioeconomic status, age, national origin or ancestry by members of the law enforcement agency, states that individuals may be stopped or detained only when legal authority exists to do so and states that members of the law enforcement agency must base their enforcement actions solely on an individual's conduct and behavior or specific suspect information; [PL 2019, c. 410, §2 (AMD).]
- F. Police pursuits; [PL 1993, c. 744, §5 (NEW).]
- G. Citizen complaints of police misconduct; [PL 2003, c. 370, §1 (AMD).]

H. Criminal conduct engaged in by law enforcement officers; [PL 2003, c. 656, §1 (AMD); PL 2003, c. 677, §1 (AMD).]

I. Death investigations, including at a minimum the protocol of the Department of the Attorney General regarding such investigations; [RR 2003, c. 2, §89 (COR).]

J. Public notification regarding persons in the community required to register under Title 34-A, chapters 15 and 17; [PL 2013, c. 147, §17 (AMD).]

J. **(REALLOCATED TO T. 25, §2803-B, sub-§1, ¶K)** [RR 2003, c. 2, §91 (RAL); PL 2003, c. 677, §3 (NEW).]

K. **(REALLOCATED FROM T. 25, §2803-B, sub-§1, ¶J)** Digital, electronic, audio, video or other recording of law enforcement interviews of suspects in murder, Class A, Class B and Class C crimes and the preservation of investigative notes and records in such cases; [PL 2019, c. 466, §1 (AMD).]

K-1. Digital, electronic, audio, video or other recording of law enforcement interviews of witnesses in murder investigations and Class A, Class B and Class C crime investigations and the preservation of records in such investigations. A policy adopted under this paragraph may not require the recording of all witness interviews, but must factor in the feasibility of recording individual interviews, taking into account the circumstances of the witness, the time and place of the interview and the crime as well as the capability of the law enforcement agency to record the interview; [PL 2021, c. 381, §1 (NEW).]

L. Mental illness and the process for involuntary commitment, and the process pursuant to Title 34-B, section 3862-A; [PL 2021, c. 342, §1 (AMD).]

M. Freedom of access requests. The chief administrative officer of a municipal, county or state law enforcement agency shall certify to the board annually 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; [PL 2023, c. 394, Pt. A, §7 (AMD).]

N. Unannounced execution of search warrants; and [PL 2023, c. 394, Pt. A, §8 (AMD).]

O. By January 1, 2024, the confidentiality of attorney-client communications, which must include, at a minimum, processes to protect and ensure confidentiality of attorney-client communications and processes to be followed in the event that there is a breach of attorney-client confidentiality. [PL 2023, c. 394, Pt. A, §9 (NEW).]

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.
[PL 2023, c. 235, §§6-8 (AMD); PL 2023, c. 394, Pt. A, §§7-9 (AMD).]

2. Minimum policy standards. The board shall establish minimum standards for each law enforcement policy pursuant to subsection 1 with the exception of the freedom of access policy under subsection 1, paragraph M. Minimum standards of new mandatory policies enacted by law must be adopted by the board no later than December 31st of the year in which the law takes effect.
[PL 2013, c. 147, §21 (RPR).]

3. Agency compliance. The chief administrative officer of each law enforcement agency shall certify to the board annually no later than January 1st of each year that the agency has adopted written policies consistent with the minimum standards established or amended by the board and that all officers have received orientation and training with respect to new mandatory policies or new mandatory policy changes pursuant to subsection 2. New mandatory policies enacted by law must be implemented by all law enforcement agencies no later than the July 1st after the board has adopted the minimum standards.
[PL 2013, c. 147, §22 (RPR).]

4. Penalty.
[PL 2005, c. 331, §17 (RP).]

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.

[PL 1993, c. 744, §5 (NEW).]

6. Freedom of access.

[PL 2013, c. 147, §23 (RP).]

7. Certification by record custodian.

[PL 2013, c. 147, §24 (RP).]

SECTION HISTORY

PL 1993, c. 744, §5 (NEW). PL 2001, c. 686, §B1 (AMD). RR 2003, c. 2, §§89-91 (COR). PL 2003, c. 185, §1 (AMD). PL 2003, c. 361, §1 (AMD). PL 2003, c. 370, §§1-4 (AMD). PL 2003, c. 656, §§1-4 (AMD). PL 2003, c. 677, §§1-4 (AMD). PL 2005, c. 331, §§16,17 (AMD). PL 2005, c. 331, §33 (AFF). PL 2005, c. 397, §C17 (AMD). PL 2009, c. 336, §18 (AMD). PL 2009, c. 451, §§1-5 (AMD). PL 2009, c. 652, Pt. A, §§37, 38 (AMD). PL 2011, c. 265, §§2-4 (AMD). PL 2011, c. 640, Pt. D, §1 (AMD). PL 2011, c. 680, §§4-6 (AMD). PL 2013, c. 147, §§16-24 (AMD). PL 2015, c. 329, Pt. A, §14 (AMD). PL 2019, c. 410, §2 (AMD). PL 2019, c. 411, Pt. C, §3 (AMD). PL 2019, c. 411, Pt. D, §3 (AFF). PL 2019, c. 466, §1 (AMD). PL 2021, c. 342, §§1-3 (AMD). PL 2021, c. 381, §1 (AMD). PL 2021, c. 647, Pt. B, §56 (AMD). PL 2021, c. 647, Pt. B, §65 (AFF). RR 2021, c. 2, Pt. A, §88 (COR). PL 2023, c. 235, §§6-8 (AMD). PL 2023, c. 394, Pt. A, §§7-9 (AMD).

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AUBURN POLICE DEPARTMENT
STANDARD OPERATING PROCEDURE

	Effective Date 08/08/2022	Number 54
Subject Media Relations		
Distribution All Personnel		

I. Purpose

It is the policy of this Department to solicit the support and involvement of the community in the fulfillment of its mission. A responsive and proactive relationship with the media is necessary to accomplish this goal. Therefore, this Department will establish guidelines for the release of information to the news media and to provide the news media and public with timely and accurate information regarding Department activities while ensuring that police investigations are not jeopardized by the premature release of information.

II. Policy

The Auburn Police Department actively seeks to establish a cooperative climate in which the news media may obtain information on matters of public interest in a manner that does not hamper police operations. The Department is committed to informing the community and the news media of events within the public domain in a timely and accurate manner. However, certain information must be withheld from the media to protect the constitutional rights of an accused, to avoid interfering with a Department investigation, or because it is legally privileged. It is the responsibility of each employee to abide by this philosophy of cooperation.

III. Procedures

A. Public Information Function

1. The Deputy Chief of Police is designated as the Public Information Officer (PIO) and is responsible for the public information function of the Department, and compliance with the Freedom of Access Act.
2. In the absence of the Deputy Chief, the Criminal Investigation Commander or the on-duty Watch Commander, will be responsible for:
 - a. Assisting news personnel in covering routine news stories, and at the scene of incidents when so required.
 - b. Being available for on-call responses to the news media.
 - c. Preparing and distributing formal news releases, subject to the approval of the Deputy Chief or his designee.
 - d. Arranging for, and assisting at news conferences.
 - e. Coordinating and authorizing the release of information about victims, witnesses, and suspects.
3. It shall be the responsibility of the Chief of Police or designee to:
 - a. Coordinate and authorizing the release of information concerning:
 - a. Confidential Department investigations and operations.
 - b. Assisting in crisis situations within the department.
4. Police Officers who are approached by members of the news media for information concerning official activities of the Department are to refer all such inquiries to the on-duty Watch Commander. **Officers shall NOT communicate routinely with the media or representatives thereof without first consulting with and obtaining the permission of the on-duty Watch Commander to do so.**

B. News Media / On-Scene Access

Agency personnel should be courteous to news media representatives at crime and critical incident scenes.

1. At such scenes, agency personnel shall ensure that the media respect the established perimeter. Members of the media have no greater or lesser access to an incident scene than members of the general public.
2. The PIO may grant closer access to news personnel and their equipment, to the degree that it does not interfere with law enforcement operations.
3. No member of this agency shall prohibit the media from news gathering practices, including photography and interviews, outside the established perimeter.
4. News media representatives shall not be prevented from access to any area solely because of the possibility of their injury or death. If this is the only consideration, the media representative should be advised of the danger and allowed to make the decision to enter on his/her volition.
5. Information at crime/critical incident scenes will be released by the PIO or scene commander.
6. At critical incident scenes, the PIO or scene commander will establish a media briefing area as close to the scene as safety and operational requirements allow.
7. At critical incident scenes, members of the agency will work in close cooperation with the media to ensure that live broadcasts do not disclose any information that could endanger law enforcement personnel or the general public.
8. If other agencies are involved in a mutual effort, the agency with primary jurisdiction will be responsible for releasing information unless other arrangements have been agreed upon.

C. News Releases

1. News releases are divided into five (5) categories. The frequency and content of the release depends upon the objective desired. Normally releases will be provided to those media agencies that have a direct relationship with the service community. The five types of news releases are:
 - a. **ONGOING INVESTIGATIONS** - It is important that all releases contain the same information. If possible a printed release will be prepared for distribution to the media. The Chief, Deputy Chief, Criminal Investigation Commander or their designee (the Watch Commander in their absence), **MAY RELEASE** the following information:
 - 1.) The type of crime or nature of incident.
 - 2.) The location (certain restrictions apply), date, time, injuries sustained, damaged property and a brief description of the incident.
 - 3.) Amount and type of property taken, including value if known.
 - 4.) The name, age, and address of any adult charged with a crime.
 - 5.) The fact that a juvenile has been taken into custody, including sex and age.
 - 6.) The nature, substance or text of the charge.
 - 7.) The facts, time and place of arrest.
 - 8.) The next step in the judicial process.
 - 9.) Requests for aid in locating evidence, a complainant, or a suspect. The identity of a suspect before arrest will not be disclosed except to the extent necessary to aid in the investigation, to assist in the apprehension of the suspect, or to warn the public of any danger. A person's gender, general physical characteristics, and race may be released as descriptive information in such cases.
 - 10.) Available photographs may be released only if they serve a valid law enforcement function such as the identity of an unknown victim or to enlist public assistance in the apprehension of the offender. Release of a photograph of an unknown victim requires the authorization of the Chief of Police
 - b. **PUBLIC RELATIONS** - The PIO shall be responsible for issuing public relation news releases. Information should be provided on a regular basis to all media agencies that have contact within the Department's service area. The content of the news releases may include:

- 1.) Department accomplishments.
 - 2.) New program announcements.
 - 3.) Crime prevention information.
 - 4.) Relevant crime problems and statistics.
 - 5.) Appointments and promotions.
- c. **EMERGENCY NEWS RELEASE** - Whenever there is an immediate need to inform the general public concerning an emergency, the on duty Watch Commander may contact the news media and issue a press release. The need for such release will depend upon the severity of the situation and the need for the public to be informed. In special situations of public concern such as natural disaster (severe wind, snow emergencies, floods, or rainstorms, etc.), a major fire or a chemical spill, the Watch Commander may issue a press release at their discretion. Comments to reporters should be comprised only of factual, on-the-record information. The Deputy Chief will be informed of the emergency release as soon as practical.
- d. **INTERVIEWS** - The PIO is responsible for assisting the news media by conducting interviews him/herself or coordinating interviews with other qualified agency personnel. Employees contacted directly by the media shall notify the PIO of any interview requests. All conversations with members of the news media should be considered "on the record" and subject to being quoted.
- e. **NEWS CONFERENCES** - News conferences will be held only in connection with major events of concern to the community. The Chief of Police will be informed of all news conferences. The PIO will facilitate the news conference, which may include the Chief of Police or designee.
- f. **WITHOLDING INFORMATION**
- 1.) In general, comments to the news media concerning investigations, indictments, arrests and criminal incidents should be minimal, consistent with the responsibility of keeping the public informed without jeopardizing the rights of individuals.
 - 2.) The following information **WILL NOT** be released:
 - a. Any victim, complainant, or witness information such as identity, address, phone number, age, etc., in the following instances:
 1. The information is contained in an on-going investigation whereby release of such information may jeopardize successful resolution and/or prosecution of the case.
 2. The information is contained in any sex offense or sex related investigation, which, if divulged, would tend to lead to the victim's identification.
 - b. Law enforcement officers may not disclose the identity of any juvenile in releasing information to the general public as to the arrest, investigation or disposition of any case involving a juvenile.
 - c. Medical information relating to health history, any diagnosis, medical condition, and treatment provided or evaluation made by health care providers.
 - d. The identity of any critically injured or deceased person, before notification of the next of kin.
 - e. Personnel data relating to any sworn member or employee of the department. Questions concerning personnel will be referred to the Chief of Police.
 - f. Exact information concerning an on-going investigation, whether it be a crime or traffic accident, will not be released if the information would jeopardize the investigation or prosecution of a subject.
 - g. Any police information released from other agencies that was furnished for confidential or law enforcement purposes.
 - h. Preliminary drafts, notes, impressions, memoranda, etc.
 - i. Confidential intelligence or operations will not be disclosed except by express permission of the Chief of Police.
 - j. Sensitive or investigative information concerning internal investigations except by express permission of the Chief of Police.

k. Any records required to be kept confidential by federal or state law or rule of the court.

D. Meetings with the Media

Reaffirming this agency's commitment to positive media relations, the Police Chief and PIO shall meet on a regular basis with media representatives to discuss issues of mutual interest or concern. Proposed or anticipated changes in department policy or procedures dealing with the media also will be addressed at this time.

E. Live Coverage Agreements

Live coverage agreements establish voluntary guidelines for the broadcast of live pictures or information emanating from critical incidents scenes such as hostage situations, barricaded subjects and other ongoing crises. This agency supports the creation, implementation and use of such agreements.

F. Media Credentials

This agency acknowledges representatives from recognized media organizations who carry and/or display photographic identification issued by their employer. Anyone else is considered a member of the general public.

G. Alternative Methods to Disseminate Information

It is the policy of this agency to pursue alternative methods of disseminating information directly to the public. These may include social media, government access cable television shows, web sites, public appearances by agency members, public area bulletin boards and others.

Per Order of: 
Jason D. Moen, Chief of Police

PRESQUE ISLE POLICE DEPARTMENT

GENERAL ORDER

SUBJECT: MEDIA RELATIONS

NUMBER: GO2-19

EFFECTIVE DATE: 3/18/2015

REVIEW DATE: Annual

AMENDS/SUPERSEDES:

**LAW ENFORCEMENT MEDIA RELATIONS
(5/17/2004)**

Approved: Laurie J. Kelly
Chief of Police

I. POLICY:

It is the policy of this department to cooperate fully and impartially with authorized news media representatives in their efforts to gather factual, public information pertaining to activities of this department, as long as the public access does not violate the law. This department will involve the news media in the implementation of this policy and to make them aware of its provisions. Seeking news media input should lead to a more productive working relationship between the law enforcement agency and the media.

II. PURPOSE:

It is the purpose of this policy to establish guidelines for release and dissemination of public information to any "media service."

III. DEFINITIONS:

- A. Breaking News: Major news developments, such as: fatal or serious motor vehicle crashes, major crimes, incidents or disasters, or quickly changing events that are very likely to generate significant news media inquiries.
- B. Formal Press Conference: A planned event in a formal setting to announce major policy statements, achievements or announcements, in which all representatives of the news media are invited. Press conferences will be conducted only with the approval of the Chief of Police.
- C. Intelligence and Investigative Information: Information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity. This information also includes, operation plans of the collecting agency or another agency, information compiled in the course of investigation of known or suspected crimes, civil violations, and prospective and pending civil actions. "Intelligence and Investigative Information" does not include information that is criminal history record information.

- D. News Media Representatives: Those individuals who are directly employed by agencies of the media such as: radio, television and newspapers.
- E. Nonconviction Data: Criminal history record information of the following types:
1. Arrest information without disposition, is an interval of one (1) year has elapsed from the date of the arrest and no active prosecution of the charge is pending. To be an active prosecution the case must be still actively in process, with arraignment completed and the case docketed for court trial
 2. Information disclosing that law enforcement has elected not to refer a matter to a prosecutor
 3. Information disclosing that a prosecutor has elected not to commence criminal proceedings
 4. Information disclosing that criminal proceedings have been indefinitely postponed, e.g. a "filed" case, or a case, which cannot be tried because the defendant is found to be mentally incompetent to stand trial
 5. A dismissal
 6. An acquittal, excepting an acquittal by reason of mental disease or defect
 7. Information disclosing that a person has been granted a full and free pardon or amnesty
- F. Public Information: Information that may be of interest to the general public regarding policy, procedures or events involving this department or other newsworthy information that is not legally protected from dissemination.
- G. Public Information Officer (PIO): The department's PIO serves as a central source for the release of information by the department and coordinates responses to required information by the news media and the community.

IV. PROCEDURE:

- A. Duties of the Public Information Officer (PIO): The department's PIO will generally be the Chief of Police unless they are not available at which time the PIO's duties will be handled by the Chief's designee. The department's PIO is available to:
1. Assist news personnel in covering routine news stories, and at the scenes of incidents

2. Assist the news media on an on-call basis
3. Prepare and distribute news releases
4. Arrange for, and assist with the dissemination of information at news conferences
5. Coordinate and authorize the release of information about victims, witnesses and suspects, if applicable
6. Assist in the management of crisis situations within the department
7. Coordinate the release of authorized information concerning department investigations and operations
8. The department PIO should be someone who is routinely available to respond to news media requests. If the PIO is not available, the Chief's designee should handle those duties

B. Cooperation with the Media:

1. Authorized news media representatives shall have reasonable access to the Chief of Police or in his absence the Chief's designee and operations of the department, as governed by this policy.
2. This department recognizes authorized identification from all local, national and international news organizations. Failure of media personnel to present authorized identification may provide grounds for restricting access to requested information or to incident scenes.
3. Public information shall be released to the media as promptly as circumstances allow, without partiality and in as objective a manner as possible.
4. Public information may be provided to media representatives by telephone. Telephone calls from the news media should be returned in a timely manner, keeping in mind newspaper, television and radio news deadlines.
5. Supervisors at crime or incident scenes may release information of a factual nature to the media as governed by this policy or refer the inquiry to the PIO. When the employee/officer is unsure of the facts or the propriety of releasing information, the employee/officer shall refer the inquiry to the PIO.

6. Written press statements shall be released only following approval of the Chief of Police.
7. The department's communications center shall inform a supervisor as soon as possible upon receipt of information about events or activities that may have media interest.
8. The supervisor shall be responsible for ensuring that the department's PIO or Chief of Police is informed of events that may have media interest.
9. At the scene of any event of public interest, representatives of the news media will be permitted to conduct their media related tasks, provided the activity is not in violation of the guidelines established in this order, and provided such activity does not interfere with law enforcement operations.
10. The Chief of Police will make news releases concerning the interpretations of department policy or investigation of an internal nature.

C. Formal Press Conferences: A formal event to announce major news developments, programs or policies will be conducted only with the approval of the Chief of Police. All members of the news media will be notified of the time and location of the press conference and adequate space will be provided to allow room for television camera, news photographers and microphones.

1. When available, the Chief of Police or PIO and other knowledgeable law enforcement officers will be present to provide additional background information.
2. Department representatives should be appropriately attired and respond to inquires courteously.
3. Media representatives will be supplied with appropriate press packets. Packets may include, but are not confined to:
 - a. When appropriate, a general press release detailing the incident
 - b. Applicable statistics
 - c. Photographs of suspects, news clippings and other visual objectives that will meet the special needs of the media
4. A question and answer session should follow every formal announcement to assist the media with any unanswered questions and to help clarify points made during the press conference.

D. News Releases:

1. Public information shall be released as promptly as circumstances allow in an impartial, courteous and objective manner. The supervisor shall prepare and forward newsworthy events to the PIO in a timely fashion. The PIO shall be responsible for managing press releases. Press releases shall be developed on an as needed basis.
2. Supervisors shall ensure that information concerning newsworthy events, which has been released to the press during the absence of the PIO, is reported to the PIO as soon as possible.
3. News releases concerning new policies or programs will be coordinated through the PIO. Such approval will be obtained via the chain of command.
4. When representatives of the news media desire interviews with department personnel other than those listed previously, such interviews may be conducted only with the approval of the Chief of Police.
5. In instances where more than one agency is involved, the agency having primary jurisdiction will be responsible for releasing, or coordinating the release information.

E. Photographing/Interviewing of the Accused by the Media:

1. Department officers or employees shall not deliberately pose any person in custody for photographing or televising by representatives of the media. Employees/officers should not permit any person in their custody to be interviewed.
2. Nothing herein shall be construed to prohibit the accused and/or an attorney for the accused from issuing a denial of guilt.
3. Nothing herein shall be construed to prevent the media from taking photographs of the individuals or events, so long as the media does not interfere with the law enforcement agency.

F. Information Relating to Fast-Breaking Events:

1. When inquiries are directed to the Dispatch Center, PIO or to any member concerning fast-breaking events, the Dispatch Center will direct the inquiry to the supervisor.
2. The supervisor will either attempt to respond to the inquiry or direct the media to the scene.

3. The supervisor of the scene will cooperate fully with all news media representatives within the guidelines set forth in this policy.
4. If the supervisor is not available to the news representatives or is so involved in the incident that it is impractical to brief the media representative at that moment, the supervisor will make suitable arrangements with the media representatives to contact them as soon as reasonable.

G. Media Access to Police Controlled Scenes:

1. In the event of a major crime, incident, or disaster, police lines are established for crowd control, to permit investigation and to preserve evidence. Keeping in mind the purpose of a secure crime scene and dependent upon the tactical situation, the incident supervisor should try to make an affirmative effort to provide news photographers timely access to the crime scene. This access is to be considered with sensitivity to the need to preserve and protect the crime scene and to the public's interest in observing the investigation. The news photographers will be escorted in to specific areas by investigators.
2. While media representatives may be permitted in the area of a crime scene, they do not have the authority to be within a crime scene or area that has been secured to preserve evidence, at any location where their presence jeopardizes law enforcement operations, or on private property (e.g., apartment, single-family house) without the consent of the owner or lessee.

V. **SPECIAL CONSIDERATIONS:**

A. Information that **MAY BE RELEASED** in Connection with an Investigation, Incident or Crime Include:

1. The type and nature of the incident or crime
2. Names of all persons charged, including age, gender, residence, employment, marital status, except in the case of juvenile defendants, only the age, gender and hometown may be released
3. The location, date and time, injuries sustained, damages or general description of how the incident or crime occurred
4. Type and quantity of property taken
5. The names and numbers of officers and departments involved, except the names of any undercover law enforcement officer
6. The scheduling of any judicial proceeding and place of defendant's detention
7. A warning to the public of any dangers

B. Information that **MAY NOT BE RELEASED** in Connection with an Investigation, Incident or Crime Unless Authorized by the Chief of Police Include:

1. The identity of a suspect prior to arrest, unless such information would aid in apprehending the suspect or serve to warn the public of potential danger
2. The identity of witnesses and juveniles
3. The identity of victims of sex crimes
4. The identity of critically injured or deceased person prior to notification of the next of kin
5. The results of any investigative proceeding, such as: blood alcohol tests, polygraph tests, fingerprint comparisons or lineups
6. Existence of the contents of any confession, admission or statement of a defendant, or the defendant's failure or unwillingness to make a statement
7. Statements to the character or reputation of the defendant
8. Specific cause of death, unless officially determined by the Medical Examiner
9. Information which, if prematurely released, may interfere with the investigation or apprehension of a suspect



MAINE CHIEFS OF POLICE ASSOCIATION

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Chief Charles Rumsey
Augusta Police Dept.

Law Enforcement Records Subcommittee of the Right To Know Advisory Committee November 7, 2023

Senator Carney, and distinguished Members of the Law Enforcement Records Subcommittee of the Right to Know Advisory Committee, thank you for the opportunity to submit these written comments for your law enforcement records subcommittee.

We wanted to submit written comments about issue two, “The subcommittee will consider whether to make recommendations regarding prompt release by law enforcement of information about a public safety incident or criminal investigation that occurs on a weekend, without the delays incident to submitting formal FOAA requests.”

Although the issue specifies public safety incidents or criminal investigations that occur on a weekend, we understand that there are other days and times when these incidents and investigations occur when journalists may request information such as holidays or hours outside of the normal workday, and our comments speak to all those times.

Maine law enforcement officials respect the press and its sacred role of informing the public regarding issues that may affect their lives. We take seriously our responsibility to provide this information as quickly as possible, to facilitate the media’s reporting. However, there are several factors that impact the timeliness with which we can share this information. Some or all of these factors may be present in any given public safety incident or criminal investigation:

1. Maine’s law enforcement resources are limited. When a serious incident occurs, all law enforcement personnel including chief law enforcement officers must focus their attention on resolving the matter at hand. Our singular focus to ensure or restore public safety may result in unavoidable delays in releasing information. In any of these cases, however, we do prioritize the immediate release of information when it is necessary to notify the public of danger (such as an active criminal threat to safety) or for the public’s convenience (such as closed roads or power outages).
2. Maine’s FOAA laws do require the release of records unless confidential under relevant statute, but do not and cannot require the

release of *information* prior to a record being created. For this reason, the matter under consideration may be outside the scope of the RTKAC.

3. The improper release of confidential information can expose law enforcement agencies to liability or compromise the integrity of an investigation, and therefore a clear understanding of the relevant laws is required. Most police officers do not have the prerequisite training and experience to navigate these laws, which grow more complex with every legislative session. For these reasons, the release of records regarding public safety incidents or criminal investigations is generally handled by police leadership who, depending on when a request is made, may be entirely consumed by working to ensure or restore public safety as noted above. Alternatively, they may be sleeping or otherwise unavailable for short and reasonable periods given their professional responsibilities.
4. Even if a properly trained and experienced law enforcement official is available to field a request for information or records regarding a public safety incident or criminal investigation, we operate in an environment where our actions are closely scrutinized, which is highly litigious, and which contains an infinite number of unusual scenarios requiring us to carefully review the facts known to us and compare them with applicable statutes before releasing any information. Occasionally, we will be required to consult with our jurisdiction's legal counsel and follow their guidance.

The Maine Chiefs of Police Association realizes that the delays inherent in us operating in an environment where we are often short-handed, where navigation of complex statutes requires careful consideration, and where one accidental misstep can result in us facing public criticism and legal liability are also challenging and frustrating for members of the media. Any recommendations to mitigate these challenges would be welcome, and you would find us your willing partners in such an effort.

The Association also recognizes that there may be members of our profession who do not fully understand the pressures and constraints experienced by journalists or other members of the media when gathering and timely reporting information regarding public safety incidents and criminal investigations. We would be happy to partner with media members to provide training or general awareness to our membership of the deadlines, staffing issues, and other challenges facing that profession. We believe that an increased understanding of each group's concerns would lead to increased levels of respect, collaboration, and success for all of us, and would be preferable to additional legislative mandates.

Thank you for the opportunity to share these thoughts. Please let us know if we can offer additional guidance in this matter, and we wish you luck in your important work.

Stocco, Janet

From: sarah johnson <sjohns10maine@gmail.com>
Sent: Saturday, November 11, 2023 9:46 AM
To: Stocco, Janet
Cc: sarah johnson
Subject: Invitation to provide public comment to the RTKAC Law Enforcement Records Subcommittee:

This message originates from outside the Maine Legislature.

My name is Sarah Johnson and I am a resident of Sanford Maine. My comments are in regard to item 2:

The subcommittee will consider whether to make recommendations regarding prompt release by law enforcement of information about a public safety incident or criminal investigation that occurs on a weekend, without the delays incident to submitting formal FOAA requests.

It is both the public's right to know, as well as in the interest of everyone's safety that there is prompt and full release by law enforcement of information about a public safety incident or criminal investigation that occurs on a weekend, without the delays incident to submitting formal FOAA requests.

The wording alone is clear that an incident has occurred that could endanger the public. The public deserves to be informed.

An October 3rd article in the Portland Press Herald described sanctions against the Attorney General's office for prosecutors not releasing evidence to a defendant. Maine law enforcement should be fully complying with requirements for Brady and Giglio disclosures. The topic in question is whether or not "*recommendations regarding prompt release*" should be made. There are U.S. Supreme Court cases establishing precedent stating that they absolutely should. I fully support that these recommendations should be made, but am ashamed that they need to be. Complying with requirements for Brady and Giglio disclosures should be the policy of the state of Maine.

Dirigo

Sarah Johnson, 18 Bethany Drive, Sanford Maine



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF CORRECTIONS
111 STATE HOUSE STATION
AUGUSTA MAINE
04333-0111

RANDALL A. LIBERTY
COMMISSIONER

Memo

To: Sen. Anne Carney, Chair, Right to Know Advisory Committee, Law Enforcement Records Subcommittee

From: Randall A. Liberty, Commissioner, Maine Department of Corrections

Date: November 13, 2023

Re: The Intelligence and Investigative Record Information Act

Good Afternoon Sen. Carney and members of the Right to Know Advisory Committee's Law Enforcement Records Subcommittee,

This memo is submitted in response to the subcommittee's notice that it will consider whether to recommend amending the Intelligence and Investigative Record Information Act to define the circumstances under which a person whose personal privacy might be invaded (information currently made confidential under [16 M.R.S. §804, sub-§3](#)), or that person's representative if the person is incapacitated, may consent to the release of that information.

The Maine Department of Corrections (MaineDOC) has serious concerns about attempting to define the circumstances under which a person whose personal privacy might be invaded may consent to the release of that information. These concerns stem from the fact that information contained in intelligence or investigative records is not limited to the person who is the primary subject of those records, but may also contain information related to third party individuals.

MaineDOC relies on this statute to protect information about third party individuals contained in certain records and reports related to adult and juvenile clients, both in facilities and on probation. One example is within the context of probation records, which often contain information about third parties in the life of a probation client, such as a romantic partner, child, or employer. When probation records are released to a client, attorney, or third party to whom the client has permitted the records to be released (such as a reporter), information contained within the report that pertains to third party individuals in the client's life is removed pursuant to §804(3) in order to protect the personal privacy of those individuals. An attempt to contact those individuals in order to permit the release of records containing their information could create complicated or problematic circumstances between the probation client and those individuals in their life whose approval is needed to release the information that we find concerning. It is also the case that contacting those individuals for this purpose, or releasing their names in order to determine if contact were possible, would itself be an invasion of privacy.

There are also circumstances where these records contain information about third party individuals who are other MaineDOC clients, MaineDOC residents, or victims of a crime. MaineDOC is especially concerned about a requirement to contact those individuals for approval to release these records due to the potential for conflict, danger, or further victimization for the individual being contacted.

In addition to the concerns stated above, MaineDOC has concerns regarding the feasibility of contacting each individual whose information may be contained in an intelligence or investigative record. If a record contains information on several individuals in addition to the primary subject, contacting those individuals could create a large administrative burden, especially when considering that MaineDOC does not necessarily have contact information for each of the individuals identified within these records.

For these reasons, MaineDOC has serious reservations about any attempt to define the circumstances under which a person may consent to the release of information protected under 16 M.R.S. §804(3). MaineDOC believes that the language in §804(3) is intentionally broad and highly protective for good reason and should remain that way.

Sincerely,

Randall A. Liberty
Commissioner
Maine Department of Corrections



STATE OF MAINE
Department of Public Safety
Maine State Police
State House Station 42
45 Commerce Drive,
Augusta, Maine
04333-0042

JANET T. MILLS
GOVERNOR

MICHAEL SAUSCHUCK
COMMISSIONER

COL. WILLIAM ROSS
CHIEF

LT. COL. BRIAN P. SCOTT
DEPUTY CHIEF

**Testimony of Paul Cavanaugh, DPS FOAA records officer, Legislative Liaison, and MSP
Staff Attorney**

**TO THE LAW ENFORCEMENT RECORDS SUBCOMMITTEE OF THE
RIGHT TO KNOW ADVISORY COMMITTEE ON MONDAY, NOVEMBER 13, 2023.**

Senator Carney, and distinguished Members of the Law Enforcement Records Subcommittee of the Right to Know Advisory Committee, thank you for the opportunity to offer this testimony. My name is Paul Cavanaugh, and I am the FOAA officer and legislative liaison for the Department of Public Safety and the Staff Attorney for the Maine State Police.

I am here to provide our perspective on an issue being addressed by the Committee. The issue now being discussed flows from the following question addressed at the October 23rd work session:

Whether to make recommendations regarding release of information by law enforcement entities even in the absence of a public records request under FOAA.

I believe the Committee is now looking into and gaining a better understanding of whether all law enforcement agencies are required to have a media relations policy and or a staff person designated to handle press requests. I will try to provide our perspective in two different manners and will be available if either method creates or fails to address all your questions.

Let me begin by emphasizing two circumstances: (1) there is not a specific proposal on the table – this is a conversation on the topic. If something is proposed, the Department

will review it, discuss it internally with subject matter experts, and then take a formal position. These comments are not meant to be that. (2) The Department agrees with, understands, and is committed to transparent government as the spirit and intent of FOAA demands. We have staff dedicated to routinely providing public records in all our bureaus. For years the Staff Attorney of the Maine State Police has been the Department's FOAA contact to insure we have legal review and complete compliance. With those circumstances in the front of our comments, please allow me to explain why we do not feel it appropriate to require every law enforcement agency to have a public information officer or to have specific information mandated for immediate release.

First, there is no requirement that all law enforcement agencies have a media relations policy. It is also important to remember that "law enforcement agency" includes more than police departments – it would include the DAs and the AG; it would include Secretary of State detectives, fire marshal's office, etc.

The considerations in whether they have a media relations policy are determined by the head of the department for policy and budgetary reasons. I understand the Maine Chiefs of Police will be submitting their perspective as well I don't have anything to add to their perspective or explanation.

Releasing information about an afterhours event is also completely different from FOAA requests and I am afraid the subcommittee is mixing the two as if there were a common denominator.

Second, please allow me to review three recent events to distinguish between FOAA request and the release of information in the absence of a FOAA request for after hours or weekend incidents.

On November 15, 2022, several Maine schools were put into lockdown as dispatch centers received calls about active shooters in the schools. This has been referred to in the press as the school hoax event. By the next day we had received FOAA requests for the 911 calls from all dispatch centers. It is important to remember that this event was not a single event at all – it happened at multiple locations across the State involving multiple agencies – law enforcement and otherwise. When we declined to release the transcripts, the attorney for the media outlet wrote that "law enforcement should give consideration to release the audio recordings to aid in the investigation." This despite

the fact it is a crime to release 911 audio (25 MRS §2929(6)) and despite FOAA intent for government oversight not for press crime solving. The transcripts were not released because the FBI took over the investigation and said releasing the transcripts would compromise their process. DPS is able to address confrontations like this and demands that come in at the very start of a very bad situation. Smaller agencies will have less resources available; they are unlikely to have an attorney on staff; and they will hopefully have less experiences like this to draw on. Additionally, these demands are not made to watch law enforcement, as FOAA intended, they were because the press wanted to help solve the crime.

On April 18, 2023, the State faced a quadruple homicide at one location and an active shooter on the interstate. That same day, we were presented with FOAA requests for the 911 call transcripts. Again, remember, this is an active investigation – mere hours old involving Yarmouth and Bowdoin locations with multiple victims and families involved. While all resources were focused on the investigation, the press was already filing FOAA requests. On June 2nd we released thirty (30) redacted transcripts to the media. Again, as you consider whether certain material should be mandated to be immediately released by law enforcement in the absence of a FOAA request, keep in mind the type of material that the press is asking for. DPS has a public information officer who was releasing information as these events and investigation unfolded, law enforcement officers were updating the public about any ongoing threats, and our Major Crime Unit was investigating multiple scenes across multiple counties for multiple crimes and the press was still demanding material that is protected by statute.

Finally, on October 25th, Maine was faced with the worst mass shooting in our history. The investigation is ongoing and the Governor has created a commission specifically to review this tragedy. That same day, the 25th at 10:44pm, we were getting media requests for the video footage from the helicopters involved in the suspect's pursuit and arrest. He had not been pursued or arrested at the time of the request! During the time DPS, law enforcement, and even the Governor were doing daily and sometimes multiple times a day press conferences, we were getting requests for "all communications between DPS employees and all law enforcement (local, state and federal)". Remember DPS is made of 9 bureaus and has about 640 employees. We continue to receive, process, collect, review, and release public records from this event. We will release all material we are allowed to release and will cooperate with the Governor's commission as they investigate this unprecedented tragedy. We are

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committed to transparent government. But as you are asked to consider whether every law enforcement agency should be required to have a public information officer and or be mandated to release immediately certain information, keep in mind that daily press briefings and the constant updates from our PIO was not sufficient to satisfy the press coverage. What small department would be capable of satisfying this level of press demand and maintain the criminal investigation while ensuring public safety?

The system we have is not perfect. We are not worried about review and are willing to make improvements when needed. DPS is committed to releasing all public records from these events and all situations. We do not think the release of the records should come at the expense of the investigations themselves nor without due consideration of victims and witnesses forced into these circumstances. We believe these examples demonstrate that an unfunded mandate to every law enforcement agency to have a press contact person available after hours and on weekends and/or to mandate the release of certain information during investigations is a one size fits all solution to a problem that does not exist.

Thank you for the opportunity to present our thoughts and concerns. We wish you good luck in addressing these important policy considerations.



November 13, 2023

Senator Carney and distinguished Members of the Law Enforcement Records Subcommittee of the Right to Know Advisory Committee,

My name is Melissa Martin, and I am submitting written comments today on behalf of the Maine Coalition Against Sexual Assault (MECASA), the organization which represents and serves Maine's sexual violence prevention and response programs as well as Maine's Children's Advocacy Centers. MECASA initiates and advocates for victim-centered public policy; provides expert training, technical assistance, and resources for providers and partners; and funds the service providers in your communities.

We are providing these written comments to summarize the comments provided by our Executive Director, Elizabeth Ward Saxl, today during public comment period.

In particular, these comments were made in response to the following request:

The Intelligence and Investigative Record Information Act ([16 M.R.S. §804\(3\)](#)) currently provides that information in intelligence and investigative records is confidential if there is a "reasonable possibility that public release or inspection of the record would . . . constitute an unwarranted invasion of personal privacy." *The subcommittee will consider whether to recommend amending the law to define the circumstances under which the person whose personal privacy might be invaded, or that person's representative if the person is incapacitated, may consent to release of the information.*

MECASA raised a number of concerns about the proposed amendment for the Committee to consider primarily around clarity of language and impact on sexual assault survivors. In terms of clarify of language, MECASA highlighted that it is unclear who would be considered as a "person whose personal privacy might be invaded". It is unclear whether this includes the subject of the investigation, a crime victim, a witness, or all of the above. The proposed amendment also does not define consent, so it is unclear if a crime victim would be advised of their right to not share this information or any potential risks to their safety or the investigation made by sharing this information.

In terms of a survivor centered policy, MECASA raised the concern that having a law enforcement officer reach out to a person who has reported sexual violence during a pending investigation to get their consent about sharing information in their report may create the mistaken assumption that allowing the information to be publicly shared will somehow help the victim's case move forward. Additionally, it is unclear when the victim is a minor who would be able to consent to the release on their behalf. Perhaps most concerning would be a situation where a parent would argue that they have the right to consent to the release of information regarding child sexual assault when they are both the parent of the child and the person being investigated for the abuse.

For all of these reasons, MECASA urges this Committee to not adopt the proposed amendment.

Thank you for your consideration.

About Maine's Sexual Assault Service Providers

One in five Mainers will experience sexual assault at some point in their lifetime.¹ Each year, 14,000 Mainers will experience sexual violence.²

Maine's [sexual violence service providers](#) provide free and confidential services across the state to victims/survivors of sexual harassment and sexual assault and those close to them, as well as to individuals who wish to increase their understanding of the issues. Just some of the services include a 24-hour statewide sexual assault helpline, crisis intervention and information, support groups, in-person accompaniment and advocacy through the medical and legal systems, and school- and community-based prevention education. Services are provided for a victim/survivor regardless of when they experienced sexual violence, and regardless of what type of sexual violence they experienced. Types of sexual violence include, but are not limited to, sexual harassment and gender-based bullying, child sexual abuse, elder sexual abuse, stalking, sex trafficking, and sexual violence within an intimate partner relationship.

24/7 Confidential

Maine Sexual Assault Helpline: [1-800-871-7741](tel:1-800-871-7741)

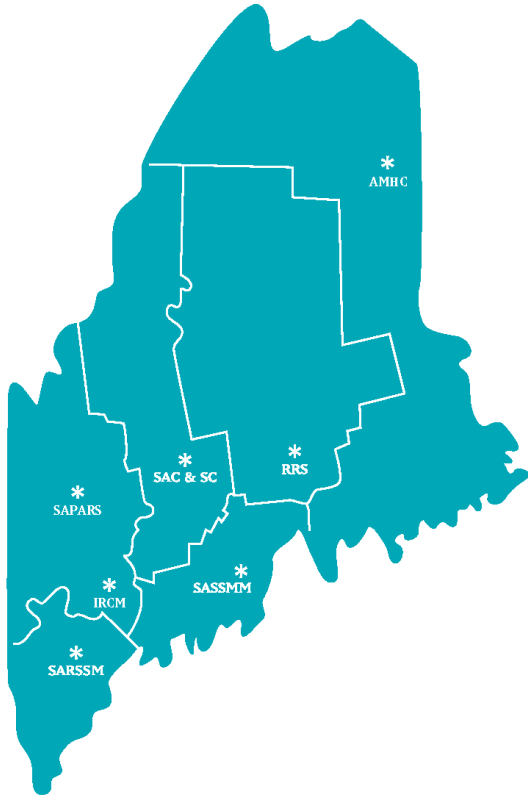
¹ Dumont, R. & Shaler, G. (2015). *Maine Crime Victimization Report: Informing public policy for safer communities*. Muskie School of Public Service, University of Southern Maine.

² *Ibid.*

mecasa

MAINE COALITION AGAINST
SEXUAL ASSAULT

info@mecasa.org | mecasa.org
207-626-0034



STATEWIDE
SEXUAL ASSAULT HELPLINE
1-800-871-7741

Free. Private. 24/7.

MAINE'S SEXUAL ASSAULT SUPPORT CENTERS

AMHC Sexual Assault Services (AMHC)

Serving Aroostook, Hancock, & Washington Counties •
amhcsexualassaultservices.org

Immigrant Resource Center of Maine

Serving Androscoggin & Cumberland Counties • ircofmaine.org

Rape Response Services (RRS)

Serving Penobscot & Piscataquis Counties • rrrsonline.org

Sexual Assault Prevention & Response Services (SAPARS)

Serving Androscoggin, Oxford & Franklin Counties and the towns of
Bridgton & Harrison • sapars.org

Sexual Assault Crisis & Support Center (SAC & SC)

Serving Kennebec & Somerset Counties • silentnomore.org

Sexual Assault Response Services of Southern Maine (SARSSM)

Serving Cumberland & York Counties • sarsonline.org

Sexual Assault Support Services of Midcoast Maine (SASSMM)

Serving Eastern Cumberland, Sagadahoc, Knox, Waldo & Lincoln
Counties • sassmm.org

MORE SEXUAL VIOLENCE SERVICES

Maine TransNet • mainetrans.net • info@mainetransnet.org

Wabanaki Women's Coalition • wabanakiwomenscoalition.org
207-763-3478

Aroostook Band of Micmacs, Domestic & Sexual Violence
Advocacy Center • 207-551-3639

Houlton Band of Maliseets, Domestic & Sexual Violence
Advocacy Center • 207-532-6401

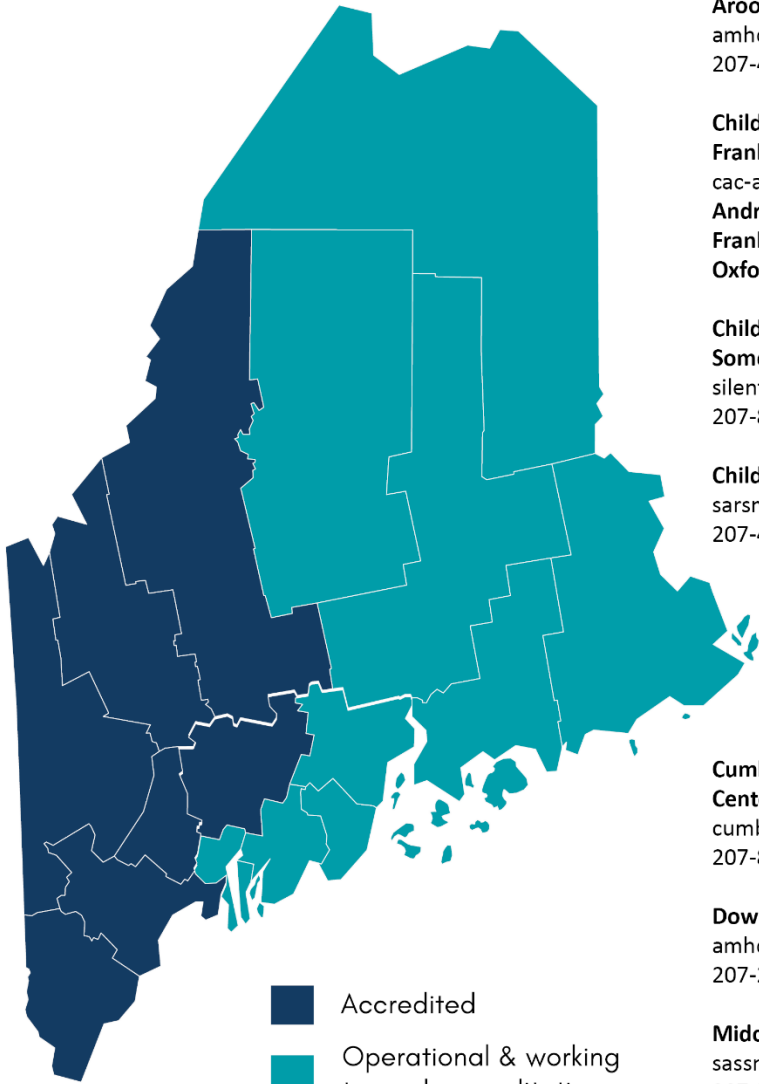
Indian Township Passamaquoddy, Domestic & Sexual
Violence Advocacy Center • 207-214-1917

Passamaquoddy Peaceful Relations • 1-877-853-2613

Penobscot Indian Nation, Domestic & Sexual Violence
Advocacy Center • 207-631-4886



Maine's Children's Advocacy Centers



Accredited

Operational & working toward accreditation

Aroostook County Children's Advocacy Center
amhcsas.org
207-472-6134

Children's Advocacy Center of Androscoggin, Franklin, and Oxford Counties
cac-af0.org
Androscoggin: 207-784-0436
Franklin: 207-778-9777
Oxford: 207-739-1228

Children's Advocacy Center of Kennebec & Somerset Counties
silentnomore.org/about-our-cac
207-861-4491

Children's Advocacy Center of York County
sarsmm.org
207-459-2380

Cumberland County Children's Advocacy Center
cumberlandcountycac.org
207-879-6160

Downeast Children's Advocacy Center
amhcsas.org
207-255-3687

Midcoast Children's Advocacy Center
sassmm.org
207-522-7162

Penquis Children's Advocacy Center
penquiscac.org
207-974-2469