

# **RIGHT TO KNOW ADVISORY COMMITTEE**

**Monday, December 4, 2023**

**1:00 p.m.**

Location: State House, Room 228 (Hybrid Meeting)

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

<https://legislature.maine.gov/Audio/#228>

1. Introductions
2. Public Comment on the topic of disciplinary records of public employees and topics that have been the subject of subcommittee discussions.
3. Reports of Subcommittees and Subcommittee Recommendations
  - a. Public Records Exceptions
  - b. Public Records Process
  - c. Law Enforcement Records
4. Consideration of Other Advisory Committee Recommendations
  - a. Disciplinary records of public employees
5. Review Outline of Draft Report
6. Adjourn



**Maine State Legislature**  
**OFFICE OF POLICY AND LEGAL ANALYSIS**  
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**MEMORANDUM**

**TO:** Right to Know Advisory Committee  
**FROM:** Committee Staff  
**DATE:** November 29, 2023  
**RE:** Misconduct Definition and Collective Bargaining Agreement Language

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At the November 6, 2023 meeting of the Right to Know Advisory Committee, members discussed possible methods for categorizing disciplinary records of public employees, including looking at underlying conduct, the discipline imposed, and the type of employment involved. The members requested the following information to assist in their discussions.

**I. Statutory definition of “misconduct”**

The members briefly discussed how misconduct of employees is defined in law. Sen. Carney noted that an applicant for unemployment compensation is not eligible for compensation if the applicant has committed misconduct and suggested that the Advisory Committee review the definition of “misconduct” for unemployment compensation purposes. A copy of the statutory definition of “misconduct” as used in the Employment Security Law, Maine Revised Statutes, Title 26, chapter 16, section 1043, subsection 23 is attached (see pages 36 – 37).

**II. Collective Bargaining Agreement Language**

The members requested examples of provisions of law enforcement and state employee collective bargaining agreements related to disciplinary records. Attached is an overview of the relevant provisions in selected collective bargaining agreements related to the categories of discipline under those agreements.

Page	Document	Disciplinary categories identified	Conduct references/other notes
1	<i>Municipal Example:</i> <a href="#">City of Auburn and Fraternal Order of Police Command Unit</a>	<ul style="list-style-type: none"> <li>▪ Written warning</li> <li>▪ Written reprimand</li> <li>▪ Suspension</li> </ul>	Carve out for a suspension in connection with a violation of “a more serious nature, i.e., causing bodily harm or life threatening in nature...”  Carve out for incidents of “sustained” sexual harassment.
6	<i>Municipal Example:</i> <a href="#">Town of Wells and Wells Police Association</a>	<ul style="list-style-type: none"> <li>▪ Infraction which is less than a suspendable offense</li> <li>▪ Suspension</li> </ul>	
11	<i>County Example:</i> <a href="#">Waldo County Commissioners and the Waldo County Deputy Sherriff’s Association</a>	<ul style="list-style-type: none"> <li>▪ Counseling (oral &amp; written)</li> <li>▪ Oral reprimand</li> <li>▪ Written reprimand</li> <li>▪ Demotion</li> <li>▪ Suspension</li> </ul>	
15	<i>County Example:</i> <a href="#">County of Penobscot and Fraternal Order of Police Lodge 012 Representing the Penobscot County Sheriff’s Office Supervisory Bargaining Unit</a>	<ul style="list-style-type: none"> <li>▪ Counseling (verbal or written)</li> <li>▪ Written reprimand</li> <li>▪ Suspension</li> <li>▪ Corrective Probation</li> <li>▪ Demotion</li> <li>▪ Discharge</li> </ul>	Carve out for counseling and discipline action based upon violations of any human rights, civil rights or sexual harassment rights law.
20	<i>State Example:</i> <a href="#">Agreement Between the State of Maine and the Maine State Troopers Association State Police Unit 2021-2023</a>	<ul style="list-style-type: none"> <li>▪ Corrective memo</li> <li>▪ Reprimand</li> <li>▪ Suspension</li> </ul>	
23	<i>State Example:</i> <a href="#">Maine Service Employees Association: Professional and Technical Bargaining Unit 2021-2023</a>  <i>See also:</i> Maine Civil Service Rule 18-389 CMR <a href="#">Ch. 12</a> Disciplinary Action, Demotion, Resignation and Layoff	<ul style="list-style-type: none"> <li>▪ Warning</li> <li>▪ Reprimand</li> <li>▪ Suspension</li> <li>▪ Demotion</li> <li>▪ Dismissal</li> </ul>	Carve out for records of disciplinary suspensions resulting from patient/client abuse, neglect or mistreatment.  Personnel file provision also addresses preventable accident reports.

**COLLECTIVE BARGAINING AGREEMENT**  
**BETWEEN**  
**CITY OF AUBURN**  
**AND**  
**FRATERNAL ORDER OF POLICE**  
**COMMAND UNIT**

July 1, 2021, to June 30, 2024

**PREAMBLE**

Pursuant to the provisions of Chapter 9A, Revised Statutes of Maine, Title 26 as enacted by the Maine Legislature, Revised September 1989 the Municipal Public Employees Labor Relations Act, this agreement is entered into by the City of Auburn, Maine (hereinafter known as the City) and Fraternal Order of Police (hereinafter known as the Union).

It is the intent and purpose of the parties to set forth herein the entire Agreement covering rates of pay; wages, hours of employment and other conditions of employment; to increase the efficiency and productivity employees in the Police Department; to provide for the prompt and fair settlement of grievances without any interruption of or other interference with the operation of the Police Department.

**ARTICLE 1 - BARGAINING UNIT**

It is expressly agreed that previous negotiations are without prejudice to the right of the City to object to the composition of the bargaining unit being represented by the negotiating team of the Union in any subsequent contract year. For the purpose of this agreement, the Fraternal Order of Police will represent all Lieutenants and Sergeants in the Auburn Police Department.

**ARTICLE 2 - RECOGNITION OF CITY RIGHTS**

Except as otherwise provided in this contract, the City shall remain vested solely and exclusively with all of its common law and its statutory rights and with all management functions including the full and exclusive control, direction, and supervision of operations and personnel including the right to hire, promote, suspend or otherwise discipline superior officers under the City Charter and Ordinances.

**ARTICLE 3 - RECOGNITION OF RIGHTS OF MEMBERS OF THE UNION**

**Section 1 - Investigation of Police Misconduct**

Members of the Auburn Police Department hold a unique status as public officers, and the security of the City and its citizens depends to a great extent upon the manner in which members of the department perform their many duties, of contacts and relationships with the public. Out of such contacts and relationships may arise questions concerning the actions of members of the force. Such questions may require prompt investigation by superior officers designated by the Chief of Police or other competent authority.

To ensure that such investigations are conducted in a manner conducive to good order and discipline, while observing and protecting the individual rights of each member of the department, the following rules of procedure are established:

- A) To the extent possible, the interrogation will be conducted at a reasonable time taking into consideration the working hours of the member and the legitimate interests of the department. The officer conducting the interrogation shall advise the member that an investigation is being conducted. The investigating officer shall inform the member of the nature of the alleged conduct, which is the subject matter of the interrogation and, unless circumstances warrant anonymity, shall identify the complainant. If it is known that the member being interrogated is a witness only, he shall be so informed.

2

- B) In any case in which a police officer has been identified as a suspect in a criminal investigation, the interrogation shall be tape recorded and the tape shall be preserved by the investigating officer until the investigation is completed and all charges dropped or processed to conclusion. At his request, the member or his attorney may listen to, transcribe, or copy all or any portion of the tape.

The interrogation shall be conducted with as much confidentiality as possible. The interrogation of a member suspected of violating department rules and regulations shall be limited to questions which are reasonably related to the member's performance as it relates to the alleged violation.

- C) If the member is under arrest or is likely to be, that is, if he is a suspect or the target of a criminal investigation, he shall be afforded all rights granted under such circumstances to other persons.
- D) In all cases in which a member is interrogated concerning a serious violation of departmental rules and regulations which, if proven, would be likely to result in his removal from the department, and where the same can be accomplished without unreasonably delaying or impeding the investigation, he shall be afforded a reasonable opportunity and facilities to contact and consult privately with an attorney of his choosing and/or a representative of the Union before being interrogated and his attorney and/or a representative of the Union may be present during the interrogation, but may not participate in the interrogation except to counsel the member.
- E) If the member under investigation is requested to submit to a polygraph examination, he or she will be furnished a list of questions which will be asked prior to the commencement of the examination. If a member is requested to submit to any other type of test, he or she will be advised of the type of test and the member will be afforded an opportunity to obtain a similar independent test if available.
- F) The investigation will be conducted without unreasonable delay and the member will be advised of the final outcome of the investigation.

## **Section 2 - Disciplinary Proceedings**

Any member charged with a violation of department rules and regulations, incompetence, misconduct, negligence, insubordination, disloyalty, or other serious disciplinary infraction may request a hearing provided such request is made in writing and delivered to the Chief or his representative no more than five days after the member is advised of the charge against him. No member shall be dismissed without first being given notice and an opportunity for a hearing whether he requests it or not. In the case of a member who has been suspended, the hearing shall, if requested by the member, be held no more than five days after the date when the suspension began.

The member shall be informed of the exact nature of the charge and shall be given sufficient notice of the hearing date and time to allow him an opportunity to consult legal counsel, conduct an investigation, and prepare a defense. The hearing, which shall be before the Chief, or in his absence or incapacity, the Acting Chief, shall be informal in nature. The member may be accompanied by legal counsel or a representative of the Union. The member shall have the right to confer with his representative at any time during the hearing and shall have the right to have his representative speak on his behalf. The member shall have the right to appeal the decision of the Chief, to the City Manager, as provided in Article 8, in any case involving a suspension. Any matters as to which a member has a right to a hearing under this Article shall not also be the subject of a grievance proceeding.

### Section 3 - Personnel Files

- A. Insofar as permitted by law, all personnel records, including home addresses, telephone numbers, and pictures of Employees shall be confidential and shall not be released to any person other than officials of the department and other City Officials, except upon a legally authorized subpoena or written consent of the Employee.
- B. Upon request, an Employee shall have the right to inspect his or her employee personnel file. The inspection shall be conducted during regular business hours and shall be conducted under the supervision of the Department. An Employee shall have the right to make duplicate copies for his own use. No records in the official personnel file shall be withheld from an Employee's inspection. An Employee shall have the right to have added to his official personnel file a written refutation of any material which he considers detrimental.
- C. No written reprimand which has not previously been the subject of a hearing shall be placed in an Employee's official personnel file unless the Employee is first given the opportunity to see a copy of the reprimand. Within five days thereafter, the Employee may file a written reply. If the Chief thereafter places the written reprimand in the Employee's official personnel file, he shall also include the reply.
- D. Discipline issued to an employee, shall be removed from an employee's personnel file after the following timelines. It will be up to the employee to request that the discipline be removed. Requests for removal of discipline shall be made in writing, to the Chief of Police.
- Written Warning – One year from date of action taken unless a violation of the similar nature has occurred within that time period. In cases of a repeat violation of a like nature, the letter(s) shall remain in the personnel file until twelve (12) months have passed since the most recent violation.
  - Written Reprimand – Two years from date of action taken unless a violation of the similar nature has occurred within that time period. In cases of a repeat violation of a like nature, the letter(s) shall remain in the personnel file until twelve (12) months have passed since the most recent violation.
  - Suspension – Five years from date of action taken unless a violation of the similar nature has occurred within that time period or unless the violation was of a more serious nature, i.e., causing bodily harm or life threatening in nature, whereas the letter(s) shall remain as a permanent part of the personnel file.
- E. Incidents of Sustained sexual harassment shall not be purged from the personnel file. "Sustained" incidents are those in which the investigation disclosed evidence proven beyond a reasonable doubt used to prove the allegations made in the complaint.

### ARTICLE 4 - NON-DISCRIMINATION

All employees have the right to work in an environment free from discrimination unrelated to job performance. Intimidation and harassment of employees, whether by fellow employees or management personnel, including sexual harassment in all its various forms, is unacceptable conduct which may constitute grounds for disciplinary action. This provision shall not in any way prevent the Union from discharging its duty of fair representation of any of its members.

**ARTICLE 5 - NOSTRIKE/NO LOCKOUT**

During the term of this Agreement, neither the Union nor its agents nor any employee, for any reason, will authorize, institute, aid, condone or engage in a slowdown, work stoppage, strike, or any other interference with the work and statutory functions or obligations of the City. During the term of this Agreement, neither the City nor its agents for any reason shall authorize, institute, aid, or promote any lockout of employees covered by this Agreement.

The Union agrees to notify all Local officers and representatives of their obligation and responsibility for maintaining compliance with this Article, including their responsibility to remain at work during any interruption which may be caused or initiated by others, and to encourage employees violating this Article to return to work. Any or all employees who violate the provisions of this Article may be discharged or otherwise disciplined.

**ARTICLE 6 - CHECK-OFF**

The employer agrees to deduct the Union's weekly membership dues (uniform amount per member) and benefit premiums from the pay of those employees who voluntarily sign a check-off authorization form. The amounts to be deducted shall be certified to the Employer by Fraternal Order of Police, and the aggregate deductions of all employees shall be submitted together with an itemized statement to the Union on a quarterly basis, after such deductions are made. The written authorization for payroll deductions of Union membership dues shall be irrevocable during the term of this Agreement except that an employee may revoke the authorization, effective upon the expiration date of this Agreement, provided the employee notifies, in writing, the Employer and Fraternal Order of Police at least thirty (30) days, but not more than sixty (60) days prior to the expiration date of this Agreement.

The authorization for deduction of benefit fund contributions may be stopped at any time, provided the employee submits in writing, to the Employer and the Union a sixty (60) day notice of such intent. The Union shall indemnify the City and any Department of the City and hold it harmless against any and all claims, demands, suits, or other forms of liability that may arise out of, or by reason of, any action taken by the City or any Department of the City for the purpose of complying with the provisions of this Article.

**ARTICLE 7 - NEGOTIATIONS TIME-OFF**

**Section 1**

The President or his designee shall be allowed reasonable time-off without loss of any benefits to represent members, at the members request, at any grievance procedure or departmental hearing and shall be allowed reasonable time to interview and represent a requesting member during all stages of a grievance procedure.

**Section 2**

Members of the Negotiating Committee shall be allowed reasonable time-off without loss of benefits to represent the Union on all negotiations with the City concerning the collective bargaining agreement.



AGREEMENT

between

TOWN OF WELLS

and

WELLS POLICE ASSOCIATION

July 1, 2020 to June 30, 2023

6

on his behalf. Any disciplinary action taken against a member shall be subject to the grievance procedure.

3. Work Rules/Rules of Discipline

3a. The Town may adopt disciplinary rules and work rules which will be posted from time to time during this Agreement. All rules and amendments thereto shall be forwarded to the Shop Steward or Alternate, who shall have ten (10) working days to request a meeting to confer concerning the proposed changes. If no such request is received, the changes shall go into effect.

3b. All suspensions and discharges shall be for just cause including, but not limited to, violations of any rules adopted above and written reasons for suspensions or discharge shall be stated in writing to the affected employee within five (5) calendar days of the action.

3c. Employees are required to abide by the terms of this Agreement and to comply with such rules and regulations as the Town may adopt which are not inconsistent with this Agreement. Should there be any doubt as to the employee's obligations, he shall comply with the rules and then grieve if he feels he has been wronged. The disciplinary measure stands should he be found to have violated the rules and regulations or any provision of this Agreement.

C. Personnel File

1. Insofar as permitted by law, all personnel records, including home address, telephone numbers, and pictures of members shall be confidential and shall not be

released to any person other than officials of the department and other Town officials, except upon a legally authorized subpoena or written consent of the member.

2. Upon request, a member shall have the right to inspect his official personnel record. Inspection shall be during regular business hours and shall be conducted under supervision of the Town Manager or designee. A member shall have the right to make duplicate copies for his own use. No records shall be withheld from a member's inspection. A member shall have a right to have added to his personnel file a written, signed, and dated refutation of any material which he considers detrimental. Nothing detrimental may be added to the member's file without first providing a copy to the member.

3. No written reprimand which has not previously been the subject of a hearing shall be placed in a member's personnel file unless the member is first given the opportunity to see a copy of the reprimand. Within five (5) calendar days thereafter, the member may file a signed and dated written reply. If the Chief thereafter places the reprimand in the member's personnel file, he shall also include the reply.

4. For Police Officers, all discipline infractions placed in an employee's file which are received for an infraction which is less than a suspendable offense shall be purged from the file if there is no disciplinary offense within the next eighteen (18) months subsequent. Suspensions shall be purged from the file if no recurrence of the disciplinary action is received by the employee within a thirty-six (36) month period subsequent to the offense. All employee refutations which go into the personnel file shall also be expunged along with the items to which they pertain.

5. For Dispatchers, all discipline infractions placed in an employee's file which are received for an infraction which is less than a suspendable offense shall be purged from the file if there is no disciplinary offense within the next twenty-four (24) months subsequent.

#### **ARTICLE 35 - HEALTH AND SAFETY**

The Association recognizes the right of the Town to establish reasonable rules and regulations for the safe, sanitary and efficient conduct of the Town's business and reasonable penalties for the violation of such rules and regulations subject to restrictions of this Agreement.

The Town is responsible for meeting safety standards which are considered to be minimum standards required by the Occupational Safety and Health Act of 1970 as well as other federal and state laws. Non-compliance with the Act may result in fine and penalty to the Town.

Proper safety devices shall be provided by the Town for all employees engaged in work where such devices are necessary. Such devices, where provided, must be used as intended.

If a member of the unit deems his vehicle or equipment to be unsafe, he shall notify his superior who, in turn, shall arrange for or conduct an appropriate inspection and shall determine whether the vehicle or equipment is safe for use. The reasonableness of this determination shall be subject to the grievance procedure.

Any employee involved in any accident shall promptly report to his immediate superior said accident and any physical injury sustained. Said report will be made on a proper form provided by the Town.

#### **ARTICLE 36 - EXTRA-HAZARDOUS INJURIES**

10

Employees covered by this Agreement who are injured on the job while performing extra-hazardous duties shall receive, in addition to compensation paid by or payable under the Workers' Compensation Act, an amount sufficient to bring up to net pay while an incapacity exists, and until they are either placed on disability retirement or return to active duty. Absence because of such injuries shall not be charged to accumulated sick leave.

A. Extra-hazardous injuries shall be defined as follows:

1. Injuries sustained while pursuing, apprehending, arresting, or detaining suspects.
2. Injuries incurred during the official operation of a police motor vehicle in emergency situations.
3. Injuries incurred while standing in a roadway directing traffic, providing the officer has not unreasonably neglected to wear safety equipment provided the officer when available.
4. Injuries sustained while actively engaged in suppressing riots, insurrections and similar civil disturbances.
5. Injuries sustained in any other authorized situation in which the Officer, because he is a police officer, is exposed to conditions not confronted by the average non-public safety employee as determined by the Chief of Police.

During the three (3) day waiting period prescribed in the law, prior to receiving Workers' Compensation benefits, the employee who may become eligible for such benefits may elect to use sick leave, if he/she has the sick time accumulated.

**AGREEMENT**  
**BETWEEN**  
**WALDO COUNTY COMMISSIONERS**  
**AND**  
**THE WALDO COUNTY DEPUTY SHERIFF'S ASSOCIATION**

**JANUARY 1, 2022 - DECEMBER 31, 2024**

**ACCEPTED OCTOBER 7, 2021**

Section 4: Right of Appeal:

All non-probationary Associates have the right to appeal disciplinary actions to the County Commissioners pursuant to established appeal procedures. Probationary associates do not have the right to appeal.

**PERSONNEL FILES**

Section 1: Inspection of Records

Upon written request, any Associate or former Associate shall have the right to inspect or have his/her authorized representative inspect his/her official personnel record in accordance with M.R.S.A Title 26, Section 631. Inspection shall be during regular business hours and shall be conducted under the supervision of the Human Resources Director. An Associate shall have the right to make duplicate copies for his/her own use, without fee one time per calendar year. Additional copies in the same year are subject to copying fees consistent with County Policy. No records shall be withheld from the Associate's inspection. An Associate shall have the right to place in his/ her personnel file a written refutation of any material that he/she considers detrimental.

Section 2: Written Reprimand

No written reprimand which has not previously been the subject of a meeting between the employee and the Sheriff or his/her designee [Reference 7.6.2 of Personnel Policy] shall be placed in an Associate's personnel file unless the Associate is first given the opportunity to see a copy of the reprimand. Within five (5) days thereafter, the Associate may file a written reply. If the Sheriff thereafter places the written reprimand in the Associate's personnel file, he/she shall also include the reply.

Section 3: Disciplinary Actions

The initiation of disciplinary action is the responsibility of the Sheriff or his/her designee.

Section 4: Time Limits for Disciplinary and Counseling Action

The following time schedules shall be placed upon Disciplinary Actions, unless otherwise agreed upon by the Sheriff and the Employee. Requests for removal of disciplinary action from an employee's personnel file shall be initiated by the employee by notifying the Human Resources Director in writing of the request.

- A) Counseling (Oral & Written). 1 year from date of issuance
- B) Oral Reprimand. 1 year from date of issuance
- C) Written Reprimand. 2 years from date of issuance
- D) Demotion. 3 years from the date of demotion.

12

E) Suspension. 5 years from date employee started suspension.

## **GRIEVANCE PROCEDURES/SETTLEMENT OF DISPUTES**

### **Section 1: Grievance Procedure**

Any grievance or dispute arising between the parties that involves the application or interpretation of a specific section of this Agreement shall be settled in the following manner:

Step 1. The employee, with or without the Association, shall take up the grievance or dispute with the employee's immediate supervisor within ten (10) working days of the date of the incident or the date the employee knew or should have known of the act or occurrence giving rise to the grievance. The supervisor shall attempt to adjust the grievance and will respond to the employee within ten (10) working days.

Step 2. If the grievance has not been resolved, it may be presented in writing to the department head by the grievant, with or without the Association, within ten (10) working days after the receipt of response in Step 1. The grievance at Step 2 and at all following steps must state specifically the nature of the grievance, the sections of the agreement that are alleged to be violated and the remedy sought. The department head shall respond in writing within ten (10) working days.

Step 3. If the grievance is still unresolved after Step 2, the grievant, with or without the Association, may within fifteen (15) working days notify the Commissioners of the nature of the grievance, the sections of the agreement alleged to be violated and the remedy sought. The Commissioners may, at their election, meet with the grievant and, if the employee desires, a representative of the Association, and hear or otherwise attempt to resolve the grievance. If the Commissioners elect to hear the grievance, a grievance meeting will be scheduled within fifteen (15) working days of receipt by the Commissioners of notification of the grievance. A decision or response by the Commissioners will be given, in writing, within ten (10) working days after the grievance meeting. If the Commissioners elect not to hear or otherwise attempt to resolve the grievance at Step 3, they will notify the grievant within ten (10) working days of receipt of notification of the grievance.

Step 4. If the grievance remains unresolved after Step 3, the Association may determine that the grievance will proceed to final and binding arbitration between the Association, acting on behalf of the grievant, and the County. The Association will notify the Commissioners of the request for arbitration within fifteen (15) working days of the Commissioners response or notification at Step 3. The Association and the Commissioners will attempt to agree on an arbitrator. If no agreement on an arbitrator has been reached between the Association and the Commissioners within fifteen (15) working days after notice of the request for arbitration has been filed with the Commissioners, the Association may file a request for arbitration through the processes of the American Arbitration Association within ten (10) working days.



## Section 2: Applicable Procedures

The County and the Association agree to provide all documents, notations or other relevant and necessary documents concerning the act or occurrence that gave rise to the grievance upon written request from the other party at Step 4.

The decision of the arbitrator shall be final and binding on the parties and the arbitrator or arbitrators shall be requested to issue a decision within thirty (30) days after the conclusion of testimony, argument or brief. If a brief is written, it will be given to the other side at the same time it is sent to the arbitrator(s). The arbitrator will have no authority to add to, subtract from, modify or go beyond the scope of the specific provisions of the agreement in reaching a decision.

Expenses for the arbitrator's services shall be borne equally by the County and the Association. However, each party shall be responsible for compensating its own representatives.

Time limits under this Article may be extended in writing at the mutual agreement of the parties. Failure to comply with the time limits in the absence of written agreement for extension will have the effect of resolving the grievance against the party failing to comply.

## MILEAGE AND REIMBURSEMENT

All official travel by Waldo County employees covered by this agreement shall be reimbursed at the level equal to the maximum IRS rate. Should any changes occur in the prevailing IRS rate during the terms of this agreement, they shall become effective on the date that coincides with the IRS date or change.

## NEPOTISM AND CONFLICT OF INTEREST

To protect against favoritism, conflict of interest or undue influence, no person will be hired, promoted or transferred to a position where the hiring authority, Department Head, or supervisor is a relative of the employee. If promotion or transfer of a current employee would result in supervision by or of a relative, the County may, if operationally feasible and at its sole discretion, alter the normal reporting relationship or take other action to avoid or reduce conflict with this Policy. Relatives are defined as: Spouse, parents, children, parents-in-law, brother, brother-in-law, sister, sister-in-law, daughter-in-law, son-in-law, aunt, uncle, niece, nephew, stepparent, and stepchild.

## WORKERS COMPENSATION

The County of Waldo will provide Workers' Compensation protection for all members of the Deputies Association ("Associate(s)"). The County will process diligently all claims pertaining to on-the-job injuries.

During an absence resulting from a disability specifically covered by Workers' Compensation, the County will pay the Associate at his/her regular rate of pay and the Associate will turn over to the County all his/her Workers' Compensation payments for loss of income during the period of disability. The County will not be liable for any payments under this provision for any

**COLLECTIVE BARGAINING AGREEMENT**

**COUNTY OF PENOBSCOT**

**AND**

**FRATERNAL ORDER OF POLICE LODGE 012**

**REPRESENTING THE**

**PENOBSCOT COUNTY SHERIFF'S OFFICE**

**SUPERVISORY**

**BARGAINING UNIT**

**EXPIRES DECEMBER 31, 2023**

intermittent basis. The amount of the benefit will be determined based on the employee's regular rate of pay. The payment will be made based on the employee's regular payroll dates.

The requesting employee is responsible for submitting a request to HR. The leave should be requested as soon as the date is known and with as much notice as possible. This leave is in addition to other forms of leave detailed in the handbook; an employee is not required to use Earned Paid Leave for this leave period.

### **ARTICLE 10 - WORKERS' COMPENSATION**

Employees may utilize any available accrued vacation or sick time for days not paid by the County on a medical leave based on a work-related injury. For non-controverted claims, the County will pay for days one through seven of a medical leave based on a work-related injury. The employee may have that portion of the accrued vacation or sick time reinstated by reimbursing the County from a Workers compensation award on a day for day basis and must turn over to the County that portion of the Workers compensation award made for days one through seven.

Sick and vacation days utilized for this purpose will not be counted in calculating incentive days, therefore the employee will be eligible for monthly and annual incentive days earned pursuant to Article 8: Sick Leave. Employees not utilizing sick or vacation days while out on Workers Compensation will also be eligible for monthly and annual incentive days earned pursuant to Article 8: Sick Leave.

If the employee receives Workers Compensation covering days one through seven, the employee must reimburse the County one week of the Workers Compensation benefit.

### **ARTICLE 11 - DISCIPLINE AND DISCHARGE**

Disciplinary action or measures shall be documented in writing and mean only the following:

Verbal or Written Counseling

Written Reprimand

Suspension

Corrective Probation

Demotion

Discharge

Discipline shall only be administered for just cause.

The parties understand and agree that "Corrective Probation," if used, is a later step in the disciplinary process, holding the same weight as a Suspension and prior to Discharge.

During any meeting with the Sheriff and/or his designee(s), or any supervisor and should it become apparent that the purpose is to either investigate for a possible disciplinary offense or to discipline the employee, then the employee may terminate the meeting until such time as Union representation can be obtained.

Nothing in this contract shall prevent the Sheriff and/or his designee(s) from calling an employee in for counseling purposes as deemed necessary by the Sheriff and/or his designee(s). Such counseling shall not be considered disciplinary action, but written documentation of the counseling session may be placed in the employee's file.

Documentation of counseling and/or discipline shall be maintained in the employee's personnel file. Provided no further counseling or discipline has been taken regarding the employee, previous counseling or discipline may be a factor in determining discipline and may only be used for the purpose of discipline within the following time frames:

Counseling(s): One Year

Written Reprimand: Three Years. However, after two years, the employee may request that the Sheriff remove the written reprimand from the personnel file. The Sheriff has the sole discretion as to whether the reprimand is removed.

Suspension: Five Years

Corrective Probation: Five Years

Demotion: Five Years

Further, all documentation of such counseling and discipline shall be removed from the employee's personnel file at the time periods specified above upon the request of the employee, provided no further counseling or discipline has been taken regarding the employee. Further, if the counseling and discipline action is based upon violations of any human rights, civil rights, or sexual harassment rights law, and such documentation is removed from the employee's personnel file, the department may maintain such documentation in its compliance file.

The Sheriff or his designee may place an employee on administrative leave with pay for purposes of conducting an administrative investigation or if the employee is the subject of a criminal investigation. When an employee becomes the subject of an internal affairs investigation, they shall be notified in writing of such investigation, unless such notification would interfere with or compromise an ongoing investigation. In the event of a criminal investigation, such paid leave shall end if the employee is charged with a crime by any law enforcement agency or after sixty (60) days whichever is sooner. If criminal charges are pending against an employee, the unpaid administrative leave may extend until such time as the charges are finally resolved. Only if the employee is acquitted or similarly absolved from guilt on all charges (unless acquittal or absolution is the result of a procedural or technical issue such as an invalid search or confession) and if the employee is returned to work, the employee shall be paid regular base wages for that time spent on leave.

When conducting an investigation, it may be an option to temporarily transfer an employee to another shift or assignment. The Sheriff/designee, the Union, and the affected employee must agree to the temporary transfer. This action must be taken in a way that would have the least negative impact on all parties. Such cases shall be by written agreement, which shall describe the assignment and duration, and shall be signed by all involved parties. If no mutual agreement can be reached, the parties shall follow the applicable language in Article 11.

18

A demotion shall be defined as being employed in a job that is in a lower pay range than the previous job. When an employee is demoted (whether voluntary or involuntary), he/she may be placed in a position in the Patrol bargaining unit and retain all seniority in the bump back as if there was no break in service.

## ARTICLE 12 - GRIEVANCE PROCEDURE

A grievance is a Complaint that the Employer has violated this Agreement. Grievances shall be resolved as follows:

For a grievance to be valid, the grievance must contain a statement of fact regarding the alleged violation and specific suggested remedy.

**Step One:** The grievance may be presented by the Union Steward, Union representative or Grievance Committee, to the Sheriff or his designated representative in writing within ten (10) business days of the date of the grievance or the employee's knowledge of its occurrence. The Sheriff or his designated representative shall respond in writing to the Union Steward, Union representative or Grievance Committee within ten (10) business days of receipt of the grievance. By written mutual agreement between the Union and the Sheriff, the time for the filing of the grievance or the response of the Sheriff or his designated representative may be extended.

**Step Two:** If the grievance remains unadjusted after Step One, it may be presented by the Union Steward, Union representative or Grievance Committee to the County Commissioners, in writing, within ten (10) business days after the response of the immediate supervisor is due. The Commissioners shall act in accordance with 30-A M.R.S.A. 5501 or the appropriate statute at the time of presentation of the grievance to them, within fifteen (15) business days. The County Commissioners and the Union's Business Agent shall schedule a Step Two meeting to be held between the parties on the second Tuesday of each month. The County Commissioners shall respond in writing to the Union representative within fifteen (15) business days from the date of the Step 2 hearing. By written mutual agreement between the Union and the County

**AGREEMENT**

**Between**

**THE STATE OF MAINE**

**and**

**THE MAINE STATE TROOPERS  
ASSOCIATION**



**STATE POLICE UNIT  
2021 - 2023**

unacceptable conduct and will not be condoned or tolerated by MSTA or the State.

The State and the MSTA agree that any disputes arising out of the provisions of this article may be processed through the grievance procedure contained in the Grievance and Arbitration Procedure article subject to the State's right to have any such grievance considered at the appropriate level or steps by the State. This provision shall not preclude other legal remedies provided by law.

### **ARTICLE 29** **PAID LEAVE**

All employees eligible for overtime shall accrue and use leave credits on the basis of an eight (8) hour day.

### **ARTICLE 30** **PARENTAL LEAVE**

Paid Parental leave for childbearing and adoption shall be granted to an employee with pay for hours regularly scheduled to work during a period of time not to exceed twenty-eight (28) calendar days, taken continuously, beginning no later than eight (8) weeks directly following the birth or adoption of the child(ren). Employees shall be allowed to retain insurance benefits during such leave.

Employees are encouraged to consult with their agency Human Resources Office to determine if they are eligible for benefits available under the Federal Family and Medical Leave Act (FMLA), and time available under FMLA would run concurrent with both paid and unpaid parental leave.

### **ARTICLE 31** **PERSONNEL FILES**

Upon request of an employee, corrective memos shall be removed from his/her personnel file after one



(1) year from the date of the corrective memo if the employee has received no further discipline. Upon request of an employee, reprimands shall be removed from his/her personnel file after three (3) years from the date of the reprimand if the employee has received no further discipline. Upon request of an employee, suspensions shall be removed from his/her personnel file after five (5) years from the date of the suspension if the employee has received no further discipline. Upon written request of an employee sixty (60) days prior to his/her retirement date, corrective memos, reprimands and suspensions shall be removed from his/her personnel file if the employee has received no further discipline within the past three (3) years, notwithstanding the time frames stated above. However, if the employee then decides not to retire, the removed record of discipline will be returned to his/her personnel file.

The Chief of the State Police or his/her designee shall comply with the law and reporting requirements of the Maine Criminal Justice Academy in reporting acts of misconduct by employees. Only a synopsis of the alleged misconduct shall be provided to the Academy Board, not the complete investigation file, unless the Department is required to do otherwise under the law.

**ARTICLE 32**  
**POLICE PROFESSIONAL LIABILITY INSURANCE**

The State agrees to continue the present level of Police Professional Liability Insurance for members of this unit during the term of this Agreement.

**ARTICLE 33**  
**PRINTING OF AGREEMENT**

The State and MSTA will share the responsibility for printing copies of the Agreement.

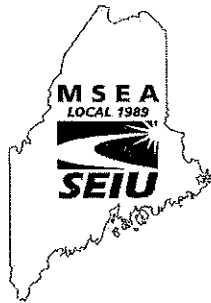
**AGREEMENT**

**between**

**STATE OF MAINE**

**and**

**MAINE SERVICE  
EMPLOYEES ASSOCIATION  
SEIU LOCAL 1989**



**PROFESSIONAL AND TECHNICAL  
SERVICES BARGAINING UNIT**

**2021-2023**

coverage for general service care. The State agrees to provide payroll deduction for dental insurance, provided such arrangements are agreed to by the insurance carrier. Dependent coverage will be available provided there is sufficient employee participation in the dental insurance program. Dependent coverage will be at the employees' expense.

## **ARTICLE 21. DEPENDENT CHILDREN POST-SECONDARY EDUCATION BENEFIT**

In the event an employee is killed during the performance of the employee's job duties, the State shall pay the tuition of the employee's dependent children who are accepted as students through the normal admissions process to attend the University of Maine, the Community College System, or the Maine Maritime Academy. Each dependent child shall be eligible for this benefit for five (5) years from their first admission date to either system or until the requirement for a degree has been met, whichever comes first.

## **ARTICLE 22. DISCIPLINE**

1. No employee shall be disciplined by the State without just cause. Notwithstanding the foregoing, new employees in an initial probationary period may be dismissed without the necessity on the part of the State of establishing just cause.

Disciplinary action shall be limited to the following: written warning, written reprimand, suspension, demotion, dismissal. The principles of progressive discipline shall be followed.

2. No employee covered by this Agreement shall be suspended without pay, demoted or dismissed without first having been given at least three (3) work days notice in writing of the disciplinary action proposed to be taken. The conduct for which disciplinary action is being imposed and the action to be taken shall be specified in a written notice. Any employee receiving such a notice of suspension, demotion, or dismissal will be afforded an opportunity to meet with the appointing authority or their representative prior to the action proposed, no less than three (3) work days after the notice was given. The employee will be entitled to have a Union representative or steward present. At that meeting the appointing authority or their designee will give the employee an explanation of the employer's evidence against the employee (if that has not already been provided) and offer the employee an opportunity to respond. Employees are on notice that a finding of having committed the offense of physical abuse is excluded from progressive discipline and may result in termination on first offense.

3. If a suspension is scheduled immediately before or after a holiday (as defined in the Holidays article), the affected employee may elect to serve the adjacent day on the holiday instead; if the State cannot accommodate the employee serving the suspension day on the holiday itself, the employee shall receive the holiday benefit as outlined in the Holidays article. In the event that the suspension is scheduled such that a holiday occurs during a suspension, the employee will not receive the holiday benefit as outlined in the Holidays article, but the holiday will be counted as one of the days of suspension.

Types  
of  
actions

who are unavailable, including employees who are on vacation, sick leave or other approved leaves of absence, and employees for whom the requirement of overtime work would cause undue hardship, shall be excused from a required overtime assignment. Employees so excused shall not lose their eligibility for overtime work within the then current rotation.

4. Work in progress, when appropriate, shall be completed by the employee performing the work at the time the determination is made that overtime is required except that an employee for whom the requirement of overtime work would cause undue hardship shall be excused from the overtime assignment.

#### **ARTICLE 46. PASSES AND TELEPHONES - FERRY SERVICE**

1. Ferry Service employees will be issued passes authorizing free passage on Ferry Service vessels for the employee, their spouse or significant other, their dependent children and their vehicles for runs to or from the island or residency of the employees. Free passage for a vehicle shall be on the same priority as that afforded paying passengers.

2. Ferry Service employees shall be permitted reasonable use of terminal telephones for necessary calls to home.

#### **ARTICLE 47. PERMANENT STATUS**

No employee's probationary period shall be extended without the employee being informed in writing prior to the expiration of such period. Unless notified in writing otherwise prior to expiration of the employee's probationary period or extension thereof, the employee shall be granted permanent status immediately following such probationary period.

#### **ARTICLE 48. PERSONAL SERVICES**

No employee shall be required to perform services of a personal nature.

#### **ARTICLE 49. PERSONNEL FILES**

1. An employee, upon written request to or after prior arrangement with the State Bureau of Human Resources, or the appropriate official at the employee's work location or in the employee's agency, shall be permitted to review their personnel files. Such review shall take place during normal office hours and shall be conducted under the supervision of the appropriate records custodian or agency representative. An employee may review their personnel files at reasonable times during the employee's regular work hours if such review does not require travel out of the normal work area. An employee shall be allowed to place in such file a response of reasonable length to anything contained therein which the employee deems to be adverse.

2. An employee's personnel file shall include, but not be limited to, all memoranda and documents relating to such employee which contain commendations, employee performance appraisals or ratings and records of training programs completed.

3. In addition to the employee's right to view their file as set forth above, the employee shall have the right to receive copies of materials included in the employee's file as set forth below:

- a. an employee may request, in writing, a copy of the employee's entire personnel file no more than once in any twelve month period, at no cost to the employee;
- b. an employee may request, in writing, a copy of all the material added to the personnel file after the copy of the entire file was provided;
- c. an employee may request a copy of specifically identified documents in the employee's personnel files;
- d. if a document, other than routine processing documents, is added to the personnel file for an action of which the employee is not reasonably aware, the employee will either be notified or receive a copy of the document; and
- e. requested documents may be provided in paper copy or electronically at the discretion of management.

4. Upon request of an employee, records of warnings, reprimands, and preventable accident reports shall be removed from personnel files after three (3) years from the date of the occurrence provided that the employee has had no further disciplinary action since that date. Upon request of an employee, records of suspensions and disciplinary demotions shall be removed from personnel files after five (5) years from the date of the occurrence provided that the employee has had no further disciplinary action since that date. However, records of disciplinary suspensions resulting from patient/client abuse, neglect or mistreatment shall not be removed from personnel files under the provisions of this paragraph.

Records of warnings and reprimands shall be deemed to be removed from the personnel files after three (3) years from the date of the occurrence provided that the employee has had no further discipline since that date.

Records of preventable accident reports shall be deemed to be removed from the personnel files after three (3) years from the date of the occurrence.

## ARTICLE 50. PRISON RAPE ELIMINATION ACT (PREA)

Notwithstanding any other provisions of this Agreement, it is understood by the parties that the State is obligated to comply with the federal Prison Rape Elimination Act (PREA).

## ARTICLE 51. PROPERTY DAMAGE

The State shall continue to reimburse employees for personal property of reasonable value damaged, destroyed or stolen while in the performance of their duties in accordance with established procedures.

## ARTICLE 52. RECLASSIFICATIONS

1. **Definitions.** For the purposes of this Agreement the following terms are defined as follows:

(a) **Classification and Reclassification.** Classification and reclassification are the assignment or reassignment, respectively, of a position or group of positions to an occupational classification which is appropriate for compensation and employment purposes.

(b) **Allocation and Reallocation.** Allocation and reallocation are the assignment

18 DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

389 BUREAU OF HUMAN RESOURCES

Chapter 12 DISCIPLINARY ACTION, DEMOTION, RESIGNATION AND LAYOFF

SUMMARY: This chapter presents the basis and procedure for demotions, suspensions and dismissals in the State Service; procedure for resignation in good standing; and the statewide mechanism for addressing the unavoidable layoff of employees.

1. DISCIPLINARY ACTION

Any action which reflects discredit upon the service or is a hindrance to the effective performance of state service shall be considered good cause for disciplinary action. Such action may include misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance, or willful violation of the Civil Service Law or of the rules.

A. Suspension

1. Cause for Suspension

An appointing authority may suspend an employee without pay for disciplinary reasons or other cause.

2. Notice of Reason

The reasons therefor shall be furnished the employee and the Director of Human Resources in writing prior to the effective date of the suspension.

3. Seniority Provision

No seniority shall be acquired during the period of suspension, unless the employee is exonerated.

4. Appeal Procedure

An employee may appeal a suspension action under the provisions of Chapter 13 as annotated.

B. Dismissal

1. Cause for Dismissal

- a. Probationary Status. Employees who do not have permanent status may be dismissed at any time at the discretion of the appointing authority except that just cause shall be required for those serving the first 30 calendar days of a probationary period following transfer or promotion.
- b. Permanent Status. No employee who has permanent status shall be dismissed from a position except for just cause.
- c. Non-Status Employees. Project, provisional, emergency and temporary employees may be dismissed at any time and shall not be entitled to a hearing before the Director of Human Resources.

NOTE: Reference Chapter 2 for regulations governing dismissal of intermittent employees.

2. Notice of Reason

The employee and the Director of Human Resources, before such action is taken, shall be furnished with a statement in writing setting forth the reason for the dismissal.

3. Appeal Procedure

An employee may appeal a dismissal action under the provisions of Chapter 13 as annotated.

2. DEMOTION

A. Cause for Demotion

An appointing authority may demote an employee for inefficient performance of duties, for disciplinary reasons, or for other just causes. Such cause may include:

1. Performance During Probation

Any time during the probationary period that an appointing authority determines that the employee's performance does not meet work standards, he/she may demote the employee, except that no employee serving a probationary period following his/her transfer or promotion shall be demoted except for just cause or with his/her

consent during the first thirty calendar days of the probationary period.

2. Layoff Action

An appointing authority, with the consent of the affected employee, may demote a permanent or probationary employee in lieu of layoff. No employee so demoted shall displace a permanent or probationary employee except in order of seniority as defined by Section 4 of this chapter.

3. Reinstatement from Military Leave

Any permanent or probationary employee about to be laid off because of the reinstatement or promotional appointment of an employee returning from military leave, shall be demoted to displace any employee with less seniority in any lower class in which he/she previously served unless he/she elects to be laid off. In either event the name of such employee shall be placed on an appropriate layoff register, and upon written application, will also be placed on an appropriate reemployment register.

B. Notice of Reason

The appointing authority shall furnish a permanent employee with a written statement of the reasons for demotion and shall file a copy of the statement with the Director of Human Resources prior to the effective date of action. Notice shall be given 15 calendar days prior to the effective date of this action.

C. Seniority Provision

Seniority of an employee in the class to which he is demoted shall be limited to service in the agency and shall consist of the combined total of his prior seniority in the class to which demotion occurs, in all higher classes, and in all other classes which the Director of Human Resources determines to be sufficiently similar to the class to which demotion occurs.

D. Probationary Provision

The probationary period of an employee demoted without prejudice during or at the end of his/her probationary period shall include the period of probationary service in the higher class.

E. Appeal Procedure



1. An employee may appeal a demotion action under the provisions of Chapter 13 as annotated.
2. A demotion in lieu of layoff shall not entitle the employee to a hearing in the demotion, but his/her name shall be placed on the layoff register, and upon written request may be placed on the reemployment register for the class from which demoted.

### 3. RESIGNATION

#### A. Advance Notice to Appointing Authority

An employee may resign from the service by presenting his/her resignation in writing to the appointing authority. To resign in good standing, an employee must give the appointing authority at least 7 calendar days' prior notice.

#### B. Notice to Director of Human Resources

A copy of such resignation shall be supplied by the appointing authority to the Director of Human Resources.

#### C. Conditions for Approval

The Director of Human Resources may make such investigation as deemed warranted for the purpose of verifying the facts as to the reasons for such resignation; and:

1. No form of resignation which is filed without date or with a future date, and which is not intended to be a bona fide and voluntary resignation to be acted upon at the time of filing, shall be accepted by the Director of Human Resources as a resignation. Each separation under such circumstances shall be deemed a dismissal and the provisions of the act and these rules relating to dismissals shall apply.
2. Any demand or request of an appointing officer for the filing of any such form or resignation for possible future action at the option of such appointing officer shall be deemed to constitute prima facie evidence of coercion in contravention of the purposes of the Civil Service Law and these rules.

#### D. Withdrawal

Upon approval of the appointing authority, an employee may withdraw his/her resignation at any time not later than ten days after the effective date of the resignation.

#### 4. LAYOFF: CONDITIONS AND PROCEDURE

##### A. Conditions

1. An appointing authority may lay off an employee in the classified service by reason of abolition of position, shortage of work or funds, or other reasons outside the employee's control which do not reflect discredit on the service of the employee.
2. Any interruption of employment of fifteen calendar days or less is not considered a layoff.
3. The duties formerly performed by laid off employees may be assigned to other permanent civil service employees who, in the opinion of the Director, hold positions in appropriate classifications.

##### B. Organizational Units

1. Organizational units may be established within an agency on the basis of geographic, functional, budgetary, statutory or other lines as approved by the Director of Human Resources and which best serve the needs of State Government.
2. In the event that organizational units are established within an agency, the units will thereafter be used for layoff and recall.
3. The appointing authority must post a listing of established organizational units or must distribute copies of the listing to notify affected employees of the establishment of organizational units.

##### C. Procedure for Layoff

1. Seniority Determinations
  - a. Seniority for purposes of layoff and recall is the length of continuous employment with permanent or probationary civil service status. There shall be no proration for part time and seasonal employment.
  - b. Seniority of permanent or probationary employees on leave of absence or layoff will continue to accrue.

- c. A former employee who is on layoff and who is reemployed within three (3) years of layoff will be credited with all accrued seniority.

2. Transfer and Demotion in Lieu of Layoff

- a. Employees who are laid off from their positions must be offered transfer in lieu of layoff to a vacant position in the same job classification or, if no vacant positions are available, to the position in the same job classification occupied by the employee with least seniority, provided the employee has greater seniority than the employee to be displaced. Transfer must be by agency, or by organizational unit, as appropriate.
- b. An employee must be offered demotion if the employee has no transfer rights to any position in the same classification. Demotion is limited to classifications previously held, with status, by the employee. Demotion rights are limited to positions that are either vacant or occupied by the least senior employee in the agency or organizational unit for which the employee to be demoted has greater seniority.

3. Equal Seniority

- a. Where it is determined that seniority is equal, transfer or demotion rights will be determined by the date of acquisition of permanent status.
- b. If transfer or demotion rights cannot be determined by date of acquisition of permanent status, these rights will be determined by the appointing authority in such a manner as to conserve to the state the services of those employees deemed most valuable.

4. Rights to Other Employment

- a. In the event that a probationary or permanent employee is to be laid off from any position while any project, acting capacity or otherwise temporary employee is working in any classification for which the Probationary or permanent employee may have transfer or demotion rights, the permanent or probationary employee must be offered the work.

5. Limitations on Transfer and Demotion

- a. Transfer and demotion rights are subject to the availability of funded positions.
- b. No employee may transfer or demote to a position if, in the opinion of the appointing authority, the employee is not qualified to perform the duties of the position and the employee cannot acquire the necessary skills and qualifications within a reasonable orientation or training period.
- c. In the event that an employee is deemed unqualified to transfer or demote to the position occupied by the least senior employee, the employee must be offered transfer or demotion to the position occupied by the least senior employee for which the employee is qualified to perform the duties, provided the employee has greater seniority than the employee to be displaced.
- d. Seasonal employees are not entitled to transfer or demote into year round positions. Year round employees are not entitled to transfer or demote into seasonal positions.
- e. Part time employees are not entitled to transfer or demote into full time positions. Full time employees are not entitled to transfer or demote into part time positions.

6. Layoff Registers and Recall

- a. The names of permanent or probationary employees laid off or demoted in lieu of layoff must be placed in order of seniority on the layoff register for the classification.
- b. Recalls to vacancies must be certified in order of seniority, first to employees who were employed within the agency or organizational unit at time of layoff or demotion, second to employees from other organizational units within the agency, and finally to employees from other agencies.
- c. The appointing authority may, with the approval of the Director of Human Resources, refuse to hire an employee for recall if the employee is not qualified to perform the duties of the position and cannot acquire the necessary skills and qualifications within a reasonable orientation or training period.

7. Recall Provisions

- a. Probationary Status. Upon recall, employees laid off during the probationary period will be credited with time served prior to layoff.
- b. Longevity. An employee who is recalled or reemployed from layoff within three (3) years of layoff will have time on layoff count for the purpose of determining eligibility for longevity pay.
- c. Vacation Accrual. Time on layoff will not count for purpose of adjustments to the vacation accrual rate.

8. Notice to Employees

- a. In every case of layoff of a permanent or probationary employee, the appointing authority must give written notice at least fifteen calendar days before the date of layoff. The notice must give reasons for the layoff. A copy of the notice must be forwarded to the Director of Human Resources at the time the notice is given to the employee.
- b. In the event that an employee is notified of transfer or demotion rights under this Chapter, the employee must inform the appointing authority of his/her decision to accept employment or to accept layoff within three work days.
- c. The appointing authority will indicate to all temporary and seasonal employees at time of hire the approximate date of termination of employment. This notice will constitute all notice required under these rules.
- d. Notice to employees must inform employees of their right to grieve disputed layoff and recall actions pursuant to Chapter 13 of these rules and sections 7081 - 7084 of the Civil Service Law.

AUTHORITY: 5 MRSA Chapter 372, §§ 7034, 7036, 7051, and 7081 - 7084.

EFFECTIVE DATE: January 14, 1979

AMENDED: June 17, 1991

EFFECTIVE DATE (ELECTRONIC CONVERSION): April 24, 1996

(b) Are services performed by an employee of this State or a political subdivision thereof, or any of their instrumentalities as provided in subsection 11, paragraph A-1, subparagraph (1), or by an employee of a nonprofit educational institution that is not an institution of higher education, as provided in subsection 11, paragraph F, subparagraph (17), division (i);

except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services; [PL 2011, c. 691, Pt. A, §28 (AMD).]

D. Nothing in this subsection may be construed to include as wages any payment that is not included as wages under the Federal Unemployment Tax Act, 26 United States Code, Section 3306(b)(5) and (r), as amended, as of January 1, 1985; and [PL 2017, c. 117, §3 (AMD).]

E. Nothing in this subsection may be construed to exclude from wages any remuneration that is:

(1) Taxable under any federal law that imposes a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or

(2) Required to be covered under this chapter as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act. [PL 2017, c. 117, §3 (AMD).]

[PL 2021, c. 456, §3 (AMD).]

**20. Week.** "Week" means such period or periods of 7 calendar days as the commissioner may by rule prescribe. The commissioner may, by rule, prescribe that a week is deemed to be "in," "within" or "during" a benefit year that includes any part of such week.

[PL 2021, c. 456, §4 (AMD).]

**21. Weekly benefit amount.** "Weekly benefit amount" means the amount of benefits an individual would be entitled to receive for one week of total unemployment.

**22. Regular employment.** "Regular employment" means work at the individual's customary trade, occupation, profession or business as opposed to temporary or odd job employment outside of such customary trade, occupation, profession or business.

=====>> **23. Misconduct.** "Misconduct" means a culpable breach of the employee's duties or obligations to the employer or a pattern of irresponsible behavior, which in either case manifests a disregard for a material interest of the employer. This definition relates only to an employee's entitlement to benefits and does not preclude an employer from discharging an employee for actions that are not included in this definition of misconduct. A finding that an employee has not engaged in misconduct for purposes of this chapter may not be used as evidence that the employer lacked justification for discharge. <=====

A. The following acts or omissions are presumed to manifest a disregard for a material interest of the employer. If a culpable breach or a pattern of irresponsible behavior is shown, these actions or omissions constitute "misconduct" as defined in this subsection. This does not preclude other acts or omissions from being considered to manifest a disregard for a material interest of the employer. The acts or omissions included in the presumption are the following:

- (1) Refusal, knowing failure or recurring neglect to perform reasonable and proper duties assigned by the employer;
- (2) Unreasonable violation of rules that are reasonably imposed and communicated and equitably enforced;
- (3) Unreasonable violation of rules that should be inferred to exist from common knowledge or from the nature of the employment;
- (4) Failure to exercise due care for punctuality or attendance after warnings;



- (5) Providing false information on material issues relating to the employee's eligibility to do the work or false information or dishonesty that may substantially jeopardize a material interest of the employer;
- (6) Intoxication while on duty or when reporting to work, or unauthorized use of alcohol or cannabis while on duty except for the use of cannabis permitted under Title 22, chapter 558-C;
- (7) Using illegal drugs or being under the influence of such drugs while on duty or when reporting to work;
- (8) Unauthorized sleeping while on duty;
- (9) Insubordination or refusal without good cause to follow reasonable and proper instructions from the employer;
- (10) Abusive or assaultive behavior while on duty, except as necessary for self-defense;
- (11) Destruction or theft of things valuable to the employer or another employee;
- (12) Substantially endangering the safety of the employee, coworkers, customers or members of the public while on duty;
- (13) Conviction of a crime in connection with the employment or a crime that reflects adversely on the employee's qualifications to perform the work; or
- (14) Absence for more than 2 work days due to incarceration for conviction of a crime. [PL 2019, c. 125, §1 (AMD); PL 2021, c. 669, §5 (REV).]

B. "Misconduct" may not be found solely on:

- (1) An isolated error in judgment or a failure to perform satisfactorily when the employee has made a good faith effort to perform the duties assigned;
- (2) Absenteeism caused by illness of the employee or an immediate family member if the employee made reasonable efforts to give notice of the absence and to comply with the employer's notification rules and policies; or
- (3) Actions taken by the employee that were necessary to protect the employee or an immediate family member from domestic violence if the employee made all reasonable efforts to preserve the employment. [PL 1999, c. 464, §2 (NEW).]

[PL 2019, c. 125, §1 (AMD); PL 2021, c. 669, §5 (REV).]

**24. Insured worker.** An "insured worker" is an individual who has been paid wages of at least \$250 for insured work in each of 2 different quarters in that individual's base period and has been paid total wages of at least \$900 in the base period for insured work. For each individual establishing a benefit year on or after January 1, 1980, an "insured worker" is an individual who has been paid wages equal to or exceeding 2 times the annual average weekly wage for insured work in each of 2 different quarters in that individual's base period and has been paid total wages equal to or exceeding 6 times the annual average weekly wage in the base period for insured work. The annual average weekly wage amount to be used for purposes of this subsection must be that which is applicable at the time the individual files a request for determination of insured status.  
[PL 2015, c. 329, Pt. A, §15 (AMD).]

**25. Institution of higher education.** "Institution of higher education" means an educational institution which:

- A. Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate; [PL 1971, c. 538, §16 (NEW).]
- B. Is legally authorized to provide a program of education beyond high school; [PL 1971, c. 538, §16 (NEW).]



**Right to Know Advisory Committee**  
September 18, 2023 (Hybrid: Zoom and Room 228)  
Meeting Summary

Convened 1:07 p.m. in person and remote on Zoom; public access on Legislature's website at:  
<https://legislature.maine.gov/audio/#228?event=89520&startDate=2023-09-18T13:00:00-04:00>

**Present in Room 228:**

Rep. Erin Sheehan  
Sen. Anne Carney  
Jon Bolton  
Lynda Clancy  
Julie Finn  
Betsy Fitzgerald  
Chief Michael Gahagan  
Cheryl Saniuk-Heinig  
Eric Stout  
Victoria Wallack

**Remote:**

Amy Beveridge  
Kevin Martin  
Judy Meyer  
Kim Monaghan

**Absent:**

Justin Chenette  
Linda Cohen

**Staff:**

Colleen McCarthy Reid  
Janet Stocco  
Lindsay Laxon

**Welcome and introductions**

Rep. Erin Sheehan convened the meeting and all members introduced themselves and identified the interests they were appointed to represent on the Advisory Committee.

**Election of chair**

Staff explained that the Advisory Committee needed to elect a new chair, as the former Advisory Committee chair, Rep. Thom Harnett, is no longer a member of the Legislature. Rep. Erin Sheehan has been appointed to the Advisory Committee as the House member of the Judiciary Committee. Sen. Anne Carney nominated Rep. Erin Sheehan serve as chair (motion seconded by Cheryl Saniuk-Heinig). Rep. Sheehan was unanimously elected chair of the Advisory Committee.

**Review of duties**

Staff reviewed the Advisory Committee's statutory duties and the annual written report due date.

**Remote participation policy**

Staff reviewed the Advisory Committee's Remote Participation Policy adopted October 26, 2021 and advised that the Advisory Committee could choose to make changes to the policy.

**Review and discussion of the Seventeenth Annual Report of the Right to Know Advisory Committee and actions related to those recommendations**

Staff reviewed the recommendations of the Advisory Committee that are contained in the 17th Annual Report from January 2023. The recommendations and subsequent actions (in italics) are outlined below.

- Enact legislation to clarify responsibility of responders to requests for public records related to time estimates

*LD 1208, An Act to Implement the Recommendations of the Right To Know Advisory Committee Concerning Time Estimates for Responding to Public Records Requests, was enacted as Public Law 2023, ch. 155. The “actual cost for time spent” language RTKAC suggested for 1 M.R.S. §408-A(8)(B) was not adopted. As enacted, the law also adds language allowing agencies to charge for devices, like thumb drives, given to the requester when fulfilling the record request.*

- Amend certain provisions of law in Titles 23, 24 and 24-A relating to previously-enacted public records exceptions  
*LD 1207, An Act to Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions, was enacted as Public Law 2023, ch. 123.*
- Enact legislation to revise the membership of the Archives Advisory Board to include a member representing journalists, newspapers, broadcasters and other news media interests  
*LD 133 was enacted as Public Law 2023, ch. 24, An Act to Include a Representative of Newspaper and Other Press Interests on the Archives Advisory Board and to Require the Member Representing a Historical Society to Have Expertise in Archival Records. As enacted, the law requires that the existing board member representing a state or local historical society have expertise in archival records and that the new member proposed by RTKAC have expertise in journalism.*
- For FOAA training purposes, recommend that the Public Access Ombudsman review the Freedom of Access website and FOAA training materials to include guidance on best practices for conducting remote meetings to optimize public participation  
*Staff communicated this recommendation to the Public Access Ombudsman.*
- Encourage the Maine Municipal Association, the Maine County Commissioners Association and the Maine School Management Association to develop guidance documents related to remote meetings  
*Staff shared a copy of the 17th Annual Report with representatives of these organizations and directed their attention to this recommendation.*
- Enact legislation to amend the law related to remote participation  
*LD 1322, An Act to Implement the Recommendations of the Right To Know Advisory Committee Concerning Remote Participation, was enacted as Public Law 2023, ch. 158. In addition, LD 1425, An Act to Strengthen Freedom of Access Protections by Allowing Remote Meetings to Be Recorded, was also enacted as Public Law 2023, ch. 185. This law requires that members of the public be allowed to record a meeting with remote participation using the electronic platform used to conduct the meeting, as long as additional costs are not incurred and the recording does not interfere with the orderly conduct of the proceeding.*
- Recommend that the Legislature direct funding to provide grants and technical assistance to all public bodies authorized to adopt remote participation policies, including counties, municipalities, school boards and regional or other political subdivisions  
*No specific action taken by the Legislature during First Regular Session or First Special Session.*
- Recommend a statutory change and the revision of the record retention schedules applicable to state, county, and municipal employee personnel records  
*LD 1397, An Act to Implement the Recommendations of the Right To Know Advisory Committee Concerning Records of Disciplinary Actions Against Public Employees, included the language recommended by RTKAC that would prevent a collective bargaining agreement or employment contract from overriding the records retention schedule established by the State Archivist and would require that records related to disciplinary actions be retained for a period of 20 years,*

*with potentially shorter retention periods for less serious conduct and potentially longer retention periods for law enforcement disciplinary actions reflecting on the credibility of the officer. But, these provisions were each removed before the bill was enacted as Public Law 2023, chapter 159.*

- Enact legislation to amend state and county employee personnel records statutes to align with the municipal employee personnel record statute  
*The enacted version of LD 1397, An Act to Implement the Recommendations of the Right To Know Advisory Committee Concerning Records of Disciplinary Actions Against Public Employees, Public Law 2023, chapter 159, implements this recommendation.*
- Enact legislation to ensure that responses to FOAA requests for “personnel records” include records that have been removed from the personnel file and are otherwise retained  
*LD 1397, An Act to Implement the Recommendations of the Right To Know Advisory Committee Concerning Records of Disciplinary Actions Against Public Employees, included the language recommended by RTKAC to implement this recommendation. But, this language was removed before the bill was enacted as Public Law 2023, chapter 159.*
- Recommend that the State Archivist, the Maine Archives Advisory Board and legislative proposals use standardized language related to record retention in schedules developed for public bodies and consider the inclusion of definitions of terms such as “remove,” “purge” and “destroy” when they are used in record retention schedules  
*LD 1397, An Act to Implement the Recommendations of the Right To Know Advisory Committee Concerning Records of Disciplinary Actions Against Public Employees, included the language recommended by RTKAC to implement this recommendation. Although this language was removed before the bill was enacted as Public Law 2023, chapter 159, the State Archivist indicated a willingness to continue working on this issue.*
- Request information from municipal, county and state law enforcement agencies regarding the prevalence and frequency of use of encrypted radio channels  
*Staff requested that municipal, county and state law enforcement agencies participate in a survey regarding the prevalence and frequency of the use of encrypted radio channels. Several responses were received, each indicating that the responding law enforcement agencies were not using encryption. Anecdotal evidence suggests that encrypted radio channels have been used only in the Lewiston/Auburn area.*
- Recommend that the Judiciary Committee, in consultation with the Criminal Justice and Public Safety Committee, continue to discuss providing expanded access to participation in the legislative process by residents of correctional facilities, including the barriers that must be resolved to allow participation  
*No action taken by Judiciary Committee during First Regular Session or First Special Session.*

**Review and discussion of legislation including public records exceptions evaluated by Judiciary Committee pursuant to 1 MRSA §434**

Staff directed the Advisory Committee to a list of proposed public records exceptions referred from policy committees to the Judiciary Committee for review in the First Regular and First Special Sessions. As required by the Freedom of Access Act (FOAA) at 1 MRSA §434, when a majority of a joint standing policy committee of the Legislature supports proposed legislation that contains a new public records exception, the legislation is referred to the Judiciary Committee for review according to the criteria laid out in statute. The Judiciary Committee reviewed ten bills considered in the First Regular and First Special Sessions containing public records exceptions.

The Judiciary Committee approved all but one of the proposed exceptions it reviewed; eight bills were enacted into law, one bill was carried over on the Special Appropriations Table and one bill died on adjournment, although the substance of the bill was incorporated into the biennial budget.

### **Review of recent Maine Supreme Judicial Court Decision**

Staff directed Advisory Committee members to *Human Rights Defense Center v. Maine County Commissioners Association Self-Funded Risk Management Pool, 2023 ME 56* which was provided in the meeting materials.

### **Discussion of issues and topics for 2023**

#### ▪ **Review of existing public records exceptions**

Staff summarized the Advisory Committee's role in reviewing all existing exceptions in Titles 22 to 25 during the 131st Legislature. Last year, a subcommittee of the Advisory Committee reviewed all existing exceptions in Titles 23, 24, 24-A and 25, leaving the exceptions in Titles 22 and 22-A for consideration this year. A chart of the exceptions subject to review this year (78, which includes 1 exception enacted in the 131<sup>st</sup> Legislature and 12 repealed exceptions) was included in the materials distributed to members in advance of the meeting and was posted to the Advisory Committee's webpage.

Staff has begun preparing for the review. Consistent with past practice, FOAA contact persons for each agency or governmental entity have been asked to submit input, through a questionnaire, on each of the exceptions that their agency/entity administers. Responses to those questionnaires have been received from most agencies; the remaining questionnaires are expected to be submitted soon.

As in past years, staff noted that the review of the exceptions may be initially completed through a subcommittee. Staff confirmed that 53 responses have been received from agencies regarding the exceptions to be reviewed this year. Kim Monaghan agreed to serve as chair of this subcommittee and Jon Bolton, Cheryl Saniuk-Heinig and Lynda Clancy agreed to serve as members of the subcommittee.

#### ▪ **Continue discussion of use of radio encryption by law enforcement**

Staff explained that in accordance with one of the recommendations of the Advisory Committee in the 17th Annual Report, staff sent a letter to police departments and contacted the Executive Director of the Maine Chiefs of Police Association to obtain information regarding the use of radio encryption by law enforcement in the State. Staff received responses from five departments indicating that the responding law enforcement agencies were not using encryption and the Executive Director of the Maine Chiefs of Police Association indicated that he was not aware of any county or municipal police department using radio encryption other than the Lewiston and Auburn police departments.

#### ▪ **Letter from Judiciary Committee requesting input**

Staff reviewed the Judiciary Committee's June 29, 2023 letter to the Advisory Committee in which the Judiciary Committee asked the Advisory Committee to examine issues related to public records that were raised in several bills considered in the First Regular and First Special sessions.

#### ▪ **Other suggested issues and topics**

Rep. Sheehan asked the Advisory Committee members for suggestions for topics for discussion or ideas for subcommittees and advised that this item would be on the agenda for the Advisory Committee's next meeting.

Kevin Martin suggested continuing the discussion of alleged problem requestors and bad faith responses about which the Advisory Committee had received comment last year. He noted that this would likely

require input from multiple parties including schools, municipal and county interests, state contacts for FOAA and possibly law enforcement.

Lynda Clancy asked whether the Advisory Committee would continue the consideration of the issues raised in LD 1397 related to the effect of collective bargaining agreements on the retention of disciplinary records. Sen. Carney noted that the Judiciary Committee received feedback at the public hearing that supervisors may use discipline for retaliation and requiring retention of these records could exacerbate the problem. She noted that additional information on this aspect of the bill and additional public participation would be valuable.

The Advisory Committee members discussed a few topics raised in the letter from the Judiciary Committee. Several members noted legal and implementation challenges related to the first topic referred from the Judiciary Committee and, as the discussion continued, members noted that several topics were similar and might be able to be addressed by a subcommittee. Sen. Carney noted that some of the bills related to areas of the law that have been recently changed and additional time may be necessary to evaluate the current law's effectiveness. The members expressed interest in including all topics from the Judiciary Committee's letter as items for possible subcommittee consideration.

Amy Beveridge commented that the Advisory Committee may wish to consider the release of information before a FOAA request is needed, particularly in the case of law enforcement records for violent crimes.

Representative Sheehan added that she has received inquiries related to the use of executive sessions and a public body's failure to identify the reason for going into executive session.

Staff agreed to compile the topics discussed by Advisory Committee members and create possible subcommittee groupings for the members' consideration at the next meeting.

#### **Public comment**

The Advisory Committee received public comment from one member of the public.

#### **Future meeting dates**

The Advisory Committee confirmed the proposed meeting schedule.

- Monday, October 2, 2023 @ 1:00 p.m., location State House, Room 228
- Monday, October 23, 2023 @ 1:00 p.m., location State House, Room 228
- Monday, November 6, 2023 @ 1:00 p.m., location State House, Room 228
- Monday, December 4, 2023 @ 1:00 p.m., location State House, Room 228

Eric Stout noted that the time before full Advisory Committee meetings has been used in the past for subcommittee meetings.

Judy Meyer asked about the Advisory Committee membership list. Staff explained that the Advisory Committee has two vacancies that are appointed by the Speaker of the House. The Speaker's Office is working on those appointments, but staff will follow up as well.

The meeting was adjourned at 2:59 p.m.

**Right to Know Advisory Committee**  
October 2, 2023 (Hybrid: Zoom and Room 228)  
Meeting Summary

Convened 1:07 p.m. in person and remote on Zoom; public access on Legislature's website at:  
<https://legislature.maine.gov/audio/#228?event=89520&startDate=2023-09-18T13:00:00-04:00>

**Present in Room 228:**

Rep. Erin Sheehan  
Sen. Anne Carney  
Lynda Clancy  
Julie Finn  
Betsy Fitzgerald  
Kevin Martin  
Eric Stout  
Victoria Wallack

**Remote:**

Amy Beveridge  
Jon Bolton  
Justin Chenette  
Chief Michael Gahagan  
Kim Monaghan  
Cheryl Saniuk-Heinig

**Absent:**

Linda Cohen  
Judy Meyer

**Staff:**

Colleen McCarthy Reid  
Janet Stocco

**Welcome and introductions**

Rep. Erin Sheehan convened the meeting and all members introduced themselves and identified the interests they were appointed to represent on the Advisory Committee.

**Update from Brenda Kielty, Public Access Ombudsman**

Brenda Kielty, an Assistant Attorney General, who serves as the Public Access Ombudsman provided an overview of her role, which she has served in since 2012, and recent FOAA-related activities and inquiries. Ms. Kielty also described some of the current and emerging issues she's focused on. Ms. Kielty noted the changes in technology since FOAA was enacted, particularly with digital records. FOAA was written based on requests for paper records, not for access to digital records. Ms. Kielty discussed the lack of clarity in the FOAA about the extent to which the public has access to database information and that there may be ways to make improvements to FOAA to make the law clearer for both requestors and public bodies responding to requests for digital records. Ms. Kielty also noted that, over the past year, she has received fewer inquiries about remote meetings and remote participation as public bodies have now implemented the remote participation in public meetings law ([1 MRSA §403-B](#)) and adapted to the use of new technology. Finally, Ms. Kielty stated that she continues to see lots of public records requests related to school districts and school board meetings.

Ms. Kielty asked for clarification related to a recommendation in the 2022 Advisory Committee report about guidance for public participation in remote meetings. Ms. Kielty stated that she is not in a position to provide authoritative guidance or technical advice on best practices for conducting Zoom meetings or using other technology platforms. Mr. Stout agreed that it may be difficult to provide definitive technical advice for different platforms, but that the recommendation was made to provide information to assist public bodies, particularly small local bodies, with providing remote access to the public. Justin Chenette concurred that the Advisory Committee recognized that some public bodies have had difficulties with remote meetings, e.g. Zoom bombing, and cautioned that there may be fewer opportunities for remote public access without additional guidance. Mr. Chenette suggested that the Advisory Committee may need more collaboration and discussion with Ms. Kielty and others before providing guidance on the

website. Ms. Kielty noted that the Ombudsman’s website does have a Frequently Asked Questions section and that links to other resources could be added, cautioning that she lacked expertise to evaluate IT guidance.

Ms. Kielty also responded to a few questions from Advisory Committee members.

Lynda Clancy asked whether Ms. Kielty needed more staff or resources. Ms. Kielty explained that only her position is funded and that she has no designated staff support. As long as her statutory responsibility continues without change, Ms. Kielty believes that current resources are adequate. However, she cautioned that additional resources would be needed if the Legislature enacts legislation that would increase or expand the role of the Ombudsman related to responses to requests for public records.

Kevin Martin asked if Ms. Kielty had any opinion on the recent legislative proposals that would change her role, such as LD 1649 and LD 1699. Ms. Kielty responded that she was not involved in the development of the legislation, but that any additional duties for her position might require an increase in staff.

Eric Stout inquired if Ms. Kielty had any recommendations for changes in her role that would provide an alternative remedy to the courts when disputes arise. Ms. Kielty stated that she would be open to such a discussion, but that significant changes would be needed to the law as the Ombudsman does not have any adjudicatory authority or subpoena powers now.

Victoria Wallack asked whether Ms. Kielty had any suggestions or advice for school boards and school districts to ensure that public records requests are reasonable. Ms. Wallack explained that there is limited staff and resources to respond to the large volume of requests that are being made. Ms. Kielty reminded everyone that FOAA has a provision allowing a public body to appeal to the court if it believes a request is not reasonable, but that the underlying policy of FOAA is to make access to public records easy and that the current law does not compel a requestor to identify themselves or to explain why they are making a request. Ms. Wallack responded that she was interested in discussing how to define a “burdensome” request and was not interested in categorizing requestors. Mr. Stout suggested that the discussion of what is a “burdensome” request could be referred to the Public Records Process Subcommittee.

#### **Public comment**

The Advisory Committee did not receive any public comment.

#### **Discussion of subcommittees and topics for committee review**

The Advisory Committee reviewed the draft chart prepared by staff that outlines the possible subcommittees and topics for committee discussion after the September 18<sup>th</sup> meeting. The Advisory Committee also considered whether to add additional topics, including a request from the Speaker’s Office for a possible public records exception for information related to grant applications under the Emergency Medical Services Stabilization and Sustainability Program, enacted as part of biennial budget law, Public Law 2023, chapter 412, Part GGGGG.

The Advisory Committee agreed to form 3 subcommittees and to ask the subcommittees to consider the following topics/issues as outlined below. The members agreed to refer the consideration of a possible public records exception information related to grant applications under the Emergency Medical Services Stabilization and Sustainability Program to the Public Records Exceptions Subcommittee. The members also agreed to amend the scope of the Public Records Process Subcommittee to add the topic of a definition of a “burdensome request” and to remove the topics related to fees and the reasonableness of a request because the Advisory Committee has recently recommended changes that were adopted by the Legislature.

Public Records Exceptions Subcommittee	Public Records Process Subcommittee	Law Enforcement Records Subcommittee
<ul style="list-style-type: none"> <li>Review of existing public records exceptions of Titles 22 and 22-A in accordance with 1 MRS §433(2-A) Request for a new public records exception for “proprietary information” included in grant applications and grant recipient reports under the Emergency Medical Services Stabilization and Sustainability Program in 32 MRS §98 (effective Oct. 25)</li> </ul>	<ul style="list-style-type: none"> <li>Standard form for FOAA requests</li> <li>Allow prioritization of certain requests based on requestor</li> <li>Give Ombudsman authority to waive agency response requirement under certain circumstances</li> <li>Provide notice to individual who is the subject of inquiry</li> <li>Repeat requestors and incomplete/delayed responses</li> <li>Define “burdensome” request</li> <li>Require body to cite reason for going into executive session</li> </ul>	<ul style="list-style-type: none"> <li>Amend the Intelligence and Investigative Record Information Act exception (16 MRS §804(3)) to allow and define the circumstances under which the person whose personal privacy might be invaded may consent to the release of the record</li> <li>Release of information by law enforcement without FOAA request</li> </ul>
<p>Kim Monaghan, Chair AAG Jonathan Bolton Lynda Clancy Cheryl Saniuk-Heinig</p> <p><i>Staff: Colleen McCarthy Reid &amp; Anne Davison</i></p>	<p>Victoria Wallack, Chair Julie Finn Judy Meyer Kevin Martin Eric Stout Representative Sheehan</p> <p><i>Staff: Lindsay Laxon &amp; Colleen McCarthy Reid</i></p>	<p>Senator Carney, Chair Amy Beveridge AAG Jonathan Bolton Julie Finn Betsy Fitzgerald Chief Gahagan Cheryl Saniuk-Heinig Judy Meyer</p> <p><i>Staff: Janet Stocco &amp; Anne Davison</i></p>

**Discussion of additional topics**

*Inclusion of records of certain tax-exempt, nonprofit organizations in public record definition.* The Advisory Committee agreed that this was not an issue that they were interested in discussing further at this time. Jonathan Bolton noted that the legal issues associated with this topic are formidable, such as the First Amendment rights of nonprofit entities, and that the Advisory Committee may need significant time to explore these issues. Sen. Carney concurred that she did not think this was an issue that the Advisory Committee should address at this time.

*Disciplinary records of public employees.* The Advisory Committee agreed that the full committee would consider the issues raised in LD 1397 related to the effect of collective bargaining agreements on the retention of disciplinary records of public employees. This topic will be added to the agenda for the October 23<sup>rd</sup> meeting. Staff will provide an overview of the bill and the issues discussed by the Judiciary Committee. Staff will also invite comment from stakeholders, including representatives of public employees, law enforcement and the Archives Advisory Board.



*Use of radio encryption by law enforcement.* Chief Gahagan recommended that the Advisory Committee did not need to take further action at this time based on the information received by surveying law enforcement agencies as there appears to be no statewide use of radio encryption. He suggested that the Advisory Committee monitor the issue moving forward. In deference to Judy Meyer, who chaired the subcommittee on this issue, the Advisory Committee deferred a decision until Ms. Meyer could be present for the discussion.

*Grants and technical assistance to all public bodies authorized to adopt remote participation policies.* Justin Chenette, who chaired the subcommittee last year, suggested that the Advisory Committee should focus on its recommendation to provide guidance and information about remote participation through the Ombudsman's website before pursuing a recommendation for more funding from the Legislature. The Advisory Committee members agreed.

*Participation in the legislative process by residents of correctional facilities.* The Judiciary Committee did not take any action to develop a working group to continue discussion of this issue (as recommended by the Advisory Committee in its recent annual report). Chair Sheehan proposed that she will confer with former chair Thom Harnett and the chairs of the JUD and CJPS Committees for their input and report back at the next meeting with a recommendation for moving forward.

#### **Next meeting**

The next meeting is scheduled for **Monday, October 23, 2023 @ 1:00 p.m.** Staff noted that the location of the meeting has been changed to the Judiciary Committee room, State House Room 438.

The remaining Advisory Committee meetings are scheduled on:

- Monday, November 6, 2023 @ 1:00 p.m., location State House, Room 228
- Monday, December 4, 2023 @ 1:00 p.m., location State House, Room 228

Staff noted that they would be in touch with subcommittee chairs about scheduling subcommittee meetings. Rep. Sheehan encouraged the subcommittees to consider using the time before the full Advisory Committee meeting on October 23<sup>rd</sup> as a potential first subcommittee date. Rep. Sheehan also noted that it is anticipated that subcommittees should be prepared to make a final report, along with any recommendations, to the full Advisory Committee no later than the December 4th meeting.

The meeting was adjourned at 2:38 p.m.

**Right to Know Advisory Committee**  
October 23, 2023 (Hybrid: Zoom and Room 438)  
Meeting Summary

Convened 1:07 p.m. in person and remote on Zoom; public access on Legislature's website at:  
<https://legislature.maine.gov/audio/#438?event=89571&startDate=2023-10-23T13:00:00-04:00>

**Present in Room 438:**

Rep. Erin Sheehan  
Sen. Anne Carney  
Jonathan Bolton  
Lynda Clancy  
Betsy Fitzgerald  
Kevin Martin  
Tim Moore  
Eric Stout  
Victoria Wallack

**Remote:**

Amy Beveridge  
Justin Chenette  
Julie Finn  
Chief Michael Gahagan  
Kim Monaghan  
Cheryl Saniuk-Heinig

**Absent:**

Linda Cohen

**Staff:**

Lindsay Laxon  
Colleen McCarthy Reid  
Janet Stocco  
Anne Davison

**Welcome and introductions**

Rep. Erin Sheehan convened the meeting and all members introduced themselves and identified the interests they were appointed to represent on the Advisory Committee.

**Committee/Subcommittee Topics – Items from Last Meeting**

Staff introduced two topics the Advisory Committee decided at the previous meeting to move to today's meeting: (1) the use of radio encryption by law enforcement and (2) participation in the legislative process by residents of correctional facilities.

On the first point (radio encryption), the Committee wanted to hear from Judy Meyer as she served as chair of the subcommittee that looked at this topic last year. Ms. Meyer expressed disappointment at the lack of response from police agencies on the issue of radio encryption but recommended that the issue be tabled at this time.

On the second point (correctional facility residents' participation in the legislative process), Rep. Sheehan noted that expanded access to participation in the legislative process is something that the Advisory Committee has previously requested the Judiciary Committee and Criminal Justice Committee pursue through an informal study. Rep. Sheehan requested guidance from staff as to what this would look like (i.e. what constitutes an informal study).

**Disciplinary Records of Public Employees**

*Presentation of LD 1397 and Background by Judy Meyer*

Staff provided an overview of LD 1397 and Judy Meyer discussed the concerns that sparked the bill in the first place, outlining local papers' attempts to access disciplinary records for several specific state troopers.

The papers' record requests were denied because, according to Ms. Meyer, records were not in the disciplinary files. The papers, the *Press Herald* and *Bangor Daily News*, began to question how disciplinary records are kept by other police departments in the State and the Maine Freedom of Information Coalition decided to issue FOAA requests to all Maine police departments, seeking access to disciplinary records going back 5 years. Ms. Meyer described how responses were "spotty," sometimes reflecting a police department's lack of disciplinary records; other departments had very detailed, readily accessible records going back decades. It became clear that there is not a standard in the State for how police departments should create and maintain disciplinary records, nor guidelines relating to record accessibility. Ms. Meyer noted that this issue extends beyond police departments and their disciplinary records to all public employees.

### *Interested Party Perspectives*

#### **1. Ben Grant – General Counsel, Maine Education Association**

Mr. Grant, representing the Maine Education Association, told the Committee that concerns about police disciplinary records could be addressed through more targeted legislation – i.e. through legislation directed only at police departments and their record-keeping, not at all public bodies and employees. As written, Mr. Grant noted that LD 1397 is too broad and would undermine and implicate labor relations at municipal, county and state levels. Mr. Grant said that while the MEA would like to see FOAA used "appropriately," public employees' privacy concerns should also be kept in mind.

Mr. Grant answered committee members' questions after briefly outlining the MEA's position, including a question about how he would justify a focus on only police departments and their records and record-keeping practices if the legislation were changed so that it was more targeted and did not apply to all public employees. Mr. Grant's response was that, while he had sensitivity to police officers, he believed incremental change was the way to go, starting with legislation focused on police departments and officers rather than focusing from the outset on the disciplinary records of all public employees. Elaborating on his earlier point about investigations and undermining labor relations, Mr. Grant stated that while a small minority of public employees may be engaged in bad behavior that the public should know about, the overwhelming majority of public employees do not engage in bad behavior. Making disciplinary records for more minor offenses or investigations public would be unnecessarily burdensome, according to Mr. Grant, and could deter people from entering or staying in the profession.

The members discussed different types of misconduct and how discipline for school employees is reported to the Department of Education. Staff will share relevant statutes from Title 20-A with members at the next meeting.

#### **2. Paul Gaspar – Executive Director of the Maine Association of Police, Maine Law Enforcement Coalition**

Paul Gaspar, Executive Director of the Maine Association of Police, joined the meeting remotely and argued for a consistent policy with respect to all public employees, saying that if one group of public employees is to be held accountable (e.g. police officers), all should be held accountable. Mr. Gaspar agreed with Mr. Grant that there are some aspects of a person's employment history that, even if embarrassing or illustrative of poor decision-making, should not be made public. Mr. Gaspar also voiced concern over vacancies and employee retention, suggesting that being under such scrutiny could further deter people from entering or staying in law enforcement positions.

The members asked about how a disciplinary action impacts certification through the Maine Criminal Justice Academy. Staff will share relevant statutes from Title 25 with members at the next meeting.

**3. Dean Staffieri – President, Maine Service Employees Association**

Dean Staffieri, President of the Maine Service Employees Association, read aloud the testimony he submitted in advance of the meeting. Mr. Staffieri urged caution and called for balance, stating: “While transparency and accountability are essential principles in government, we must approach [making public employee disciplinary records public] with great caution.” Similar to Mr. Grant and Mr. Gaspar, Mr. Staffieri said that making records public without clear guidelines and safeguards has the potential to deter workers from careers in public service. Mr. Staffieri also vocalized a concern that disciplinary records could be weaponized against workers, with consequences that are felt for the remainder of an individual’s career, and discouraged passing legislation that has the potential to override collective bargaining agreements.

**4. Tom Feely – General Counsel, Maine Service Employees Association**

Tom Feely, General Counsel for the Maine Service Employees Association, noted that although the requirements related to written employee disciplinary records arose in the context of worker protections, these written records are increasingly being weaponized and used against workers. Mr. Feely asserted that this is the case because, with increasing frequency, records are made a part of employees’ permanent records, something Mr. Feely called “detrimental to labor harmony.” Mr. Feely also warned that proposals to make disciplinary records a part of workers’ files for lengthy periods of time could incentivize employees to challenge more disciplinary decisions through arbitration.

**5. Kate McBrien, State Archivist – Maine State Archives**

Kate McBrien, the Maine State Archivist, spoke on behalf of the Maine State Archives’ Advisory Board, conveying the Advisory Board’s views concerning proposed changes to records retention schedules contained in section 5 of LD 1397. Ms. McBrien conveyed the Advisory Board’s view that, in a majority of cases, 5 years is a sufficient period of time to retain written decisions concerning public employees and disciplinary action. Ms. McBrien also conveyed the Advisory Board’s opinion that law enforcement disciplinary records represent a unique case given this group of state employees’ close interaction with members of the public and their responsibility for public safety. The Advisory Board’s recommendation, according to Ms. McBrien, is that the Department of Public Safety be consulted and tasked with creating an individual agency record retention schedule to address the final written decision of a disciplinary action of law enforcement officers. The Advisory Board recommends that this record retention schedule be for 15-20 years, a longer period than the 5-year retention period for disciplinary decisions of other state employees. As a specific agency schedule, the law enforcement record retention schedule would override the general schedule that relates to other public employees in the State. Ms. McBrien answered committee members’ questions, including questions about the size and composition of the Maine State Archives’ Advisory Board (10 members, each member with specific expertise, as set out in the governing statute, 5 MRS, §96) and how the Maine State Archives would encourage local governments to create specific law enforcement records retention schedules to align with the schedule developed for the Maine State Police.

6. **Paul Cavanagh, Staff Attorney – Maine State Police, Department of Public Safety**

Paul Cavanagh, Staff Attorney for the Maine State Police and Department of Public Safety, was present in-person to answer committee members' questions near the end of the meeting. Mr. Cavanagh emphasized that issues regarding law enforcement disciplinary records are incredibly complicated and urged that they be kept confidential. He noted that law enforcement disciplinary records, unlike those of public employees generally, may be used as *Brady/Giglio* materials and are not subject to a statute of limitations.

**Public Comment**

The Advisory Committee did not receive any public comment related to public access to disciplinary records of public employees.

**Next meeting**

The next meeting is scheduled for **Monday, November 6, 2023 @ 1:00 p.m.** The location of the meeting is State House, Room 228.

The final Advisory Committee meeting is scheduled for:

- Monday, December 4, 2023 @ 1:00 p.m., Location: State House, Room 228

The meeting was adjourned at 3:35 p.m.

**Right to Know Advisory Committee**  
November 6, 2023 (Hybrid: Zoom and Room 228)  
Meeting Summary

Convened 1:10 p.m. in person and remote on Zoom; public access on Legislature's website at:  
<https://legislature.maine.gov/Audio/#228?event=89616&startDate=2023-11-06T13:00:00-05:00>

**Present in Room 228:**

Rep. Erin Sheehan  
Sen. Anne Carney  
Lynda Clancy  
Julie Finn  
Betsy Fitzgerald  
Kevin Martin  
Judy Meyer  
Tim Moore  
Eric Stout  
Victoria Wallack

**Remote:**

Amy Beveridge  
Justin Chenette  
Chief Michael Gahagan  
Kim Monaghan

**Absent:**

Jon Bolton  
Linda Cohen  
Cheryl Saniuk-Heinig

**Staff:**

Colleen McCarthy Reid  
Lindsay Laxon  
Janet Stocco

**Welcome and introductions**

Rep. Erin Sheehan convened the meeting. Members in attendance introduced themselves and identified the interests they were appointed to represent on the Advisory Committee.

**Subcommittee Updates**

*Public records exception subcommittee.* Subcommittee Chair Kim Monaghan explained that this subcommittee is tasked with making recommendations regarding the Advisory Committee's duty to review existing public records exceptions within the Maine Revised Statutes every eight years. This year, the subcommittee is reviewing the exceptions within Title 22. The subcommittee solicits information from relevant government agencies on the exceptions scheduled for review and then reassesses whether the public interest in the record outweighs the reasons for keeping these records confidential.

At its first meeting on October 23, the subcommittee reviewed approximately half of the public records exceptions within Title 22. Although it tabled a few items, the subcommittee agreed to recommend not making any changes to most of the public records exceptions it reviewed. At its next meeting on November 9, the subcommittee plans to review the remaining public records exceptions within Title 22 and to begin discussing a new proposal to make confidential certain information submitted in grant applications and grant recipient reports under the Emergency Medical Services Stabilization and Sustainability Program, recently enacted by Public Law 2023, chapter 412, Part GGGGG. The subcommittee has also solicited additional input from stakeholders related to the items tabled at the first meeting, with a goal of holding a third meeting in time to make final recommendations to the full Advisory Committee on December 4.

*Public records process subcommittee.* This subcommittee is tasked with examining whether to recommend creating a standard form for public records requests, prioritizing records requests based on the identity of the requester, granting the Public Access Ombudsman authority to waive agency responses

to public requests under certain circumstances, providing notice to an employee who is the subject of a public records request and defining “burdensome” public records requests and establishing special processes for agencies faced burdensome requests. In addition, the subcommittee has been tasked with examining the requirements for public bodies to notify the public of the reasons for which it enters an executive session. Subcommittee Chair Victoria Wallack indicated that, at its meetings on October 23 and November 6, Ombudsman Brenda Kielty provided guidance to the subcommittee to assist in their discussions. The subcommittee will meet again to continue discussing these issues before the Advisory Committee meeting on December 4.

*Law enforcement records subcommittee.* Subcommittee Chair Anne Carney reminded members that this subcommittee was formed to consider two topics: first, whether to recommend amending the Intelligence and Investigative Record Information Act to establish a consent process for the public release of law enforcement investigative records that might implicate personal privacy. In its examination of this issue, the subcommittee is reviewing the history of this state law and comparing it to analogous provisions of the federal Freedom of Information Act. Second, the subcommittee is examining whether it is possible to facilitate the prompt release of information by law enforcement agencies about public safety issues and other topics of imminent importance to the public. The subcommittee is gathering information about the media relations policies adopted by different law enforcement agencies in an attempt to discern whether the time required to release such information can be reduced through legislation or is instead more properly characterized as a resource issue.

The subcommittee held its first meeting on October 23. The next meeting, during which the subcommittee will receive public comment, was originally scheduled for November 9 but must be rescheduled. Staff will inform the full Advisory Committee and the public of the new meeting date.

### **Discussion of Disciplinary Records of Public Employees**

Chair Sheehan and staff reminded the Advisory Committee that it invited stakeholder input and public comment on LD 1397, a bill from last session involving public access to records of disciplinary actions against public employees, at its last meeting. Having received this input, Chair Sheehan invited Advisory Committee members to share their thoughts regarding three elements of LD 1397 that were recommended by the Advisory Committee in its Seventeenth Annual Report but not retained in the final version of the bill enacted by the Legislature. As the discussion began, Eric Stout noted that the Maine State Archivist and the Archives Advisory Board are following the Advisory Committee’s work on these issues closely and are willing to provide any information or assistance requested by the committee.

*Record retention schedules for public employee disciplinary records.* First, LD 1397 would have generally required that final written decisions relating to disciplinary action be maintained for a period of 20 years but would have allowed a shorter retention period of no less than 5 years for decisions involving less serious conduct and a longer retention period for decisions that could be used to impeach the credibility of law enforcement witnesses in criminal cases (so-called *Brady/Giglio* materials). Chair Sheehan inquired how Advisory Committee members and the State Archivist would suggest defining the types of “less serious” misconduct subject to a shorter retention period.

As requested, to assist the Advisory Committee in its analysis of this issue, staff provided examples of statutes enumerating the types of misconduct that may form the basis for professional discipline—including license or certificate denial, nonrenewal, modification, suspension or termination—for public educators, law enforcement officers and licensed professionals by:

- The Department of Education, 20-A M.R.S. §§6101, 13004, 13020 and 13025;

- The Board of Trustees of the Maine Criminal Justice Academy, 25 M.R.S. §§ 2805-B, 2805-C, 2806-A and 2807; and
- A professional licensing board or commission within or affiliated with the Department of Professional and Financial Regulation, 10 M.R.S. §§ 8003, 8003-A and 8003-B;

Staff observed that these and other state statutes generally provide that complaints and other materials pertaining to disciplinary action are confidential during the pendency of an investigation but final written disciplinary decisions imposing discipline are public records.

According to State Archivist Kate McBrien, the Archives Advisory Board has discussed this issue and recommends that the decision whether disciplinary records involve “less serious” misconduct should not be left to the discretion of individual agencies or supervisors. Instead, records retention schedules should include clear guidance either defining the types of “less serious” misconduct for which disciplinary decisions may be retained for a shorter period of time or establishing graduated time periods for retaining disciplinary decisions based instead on the level of discipline imposed—*i.e.*, a warning, written reprimand, suspension or dismissal. The board generally believes that the retention period should be related to the risk posed to the public by the public employee’s misbehavior. The current general schedule for state employee personnel files requires that employee disciplinary records be retained for 5 years. Given the critical role law enforcement officers serve in the community and the public danger posed by officer misbehavior, the board may need to consider creating separate records retention schedules for state agencies that employ certified law enforcement officers with longer retention periods for those officers’ disciplinary records. The board may also recommend similar adjustments to its guidelines for local government retention schedules. Chief Michael Gahagan requested that the Archives Advisory Board work with the Maine Chiefs of Police Association to obtain input from representatives of both small and large law enforcement agencies as it considers whether to adjust records retention periods for municipal and county law enforcement officer disciplinary records.

*Location of public employee disciplinary records.* Second, LD 1397 would have required public agencies to disclose final written disciplinary records in response to a public records request regardless of whether such records are located within the public employee’s personnel file or retained by the agency in a different location. Judy Meyer recounted a situation when a request by members of the press for the disciplinary records of particular law enforcement officers was denied because, due to the provisions of a collective bargaining agreement, those records were kept by human resources staff outside of the officers’ personnel files. While the press knew to make and how to word a second request to obtain these records, she expressed concern that such records are essentially hidden from members of the public.

*The effect of collective bargaining agreements on records retention schedules.* Third, LD 1397 would have provided that records retention schedules apply notwithstanding any new collective bargaining agreements entered after January 1, 2024. State Archivist McBrien explained that existing state and local government records retention schedules currently provide that a collective bargaining agreement creating a shorter retention period for employee discipline records takes precedence over the period set forth in the retention schedules. Eric Stout and Chief Michael Gahagan pointed out that unions and public employers are frequently able to avoid litigation by negotiating agreements for shorter retention of specific disciplinary records, especially records involving less significant employee misconduct. Although she understood concerns raised by stakeholders about the need to prevent minor disciplinary records from being weaponized against public employees, Chair Sheehan nevertheless expressed discomfort with allowing collective bargaining agreements to undermine access to public records.

As the discussion of these issues progressed, several alternative approaches were proposed, including:



- State Archivist McBrien explained different ways in which the Advisory Committee might influence the process for establishing records retention schedules. For example, the Advisory Committee could draft a letter recommending that records retention periods for certain public employee disciplinary records be increased. Such a letter would be considered seriously by the Archives Advisory Board and her office. Alternatively, if it feels strongly that a particular retention period should be adopted for disciplinary records, the Advisory Committee could instead recommend that the Legislature establish that retention period in statute.
- Judy Meyer suggested the Advisory Committee only recommend increasing the retention period for law enforcement officer disciplinary decisions, not disciplinary decisions for all public employees. She reminded members this element of LD 1397 arose after the Maine press experienced difficulty obtaining disciplinary records from law enforcement agencies across the State. The press believes law enforcement officer misconduct deserves additional scrutiny given law enforcement's role in policing the conduct of the public.
- Betsy Fitzgerald wondered, if collective bargaining agreements can reduce the time period for retention of disciplinary decisions, whether the State Archivist should establish a minimum retention period not subject to alteration by such agreements.
- Kevin Martin queried whether the Advisory Committee should draw the line between more and less serious employee misconduct by reference to the grounds for revoking licensure or certification provided in current statutes. Because individuals who are no longer licensed or certified are likely ineligible for continued employment, it is unlikely that collective bargaining agreements would impose shorter retention periods for disciplinary decisions based on this misconduct. In response, Judy Meyer expressed concern that the bar for revocation of a law enforcement officer's certification is extremely high, nearly always requiring proof of the commission of a crime or injury to the public. It may not make sense to restrict the public's access to decisions involving all other types of law enforcement officer misconduct for which discipline has been imposed.
- Senator Carney asked whether it makes sense to shift from attempting to define "serious misconduct" and instead identify types of "less serious misconduct"—for example, discipline short of termination imposed for absenteeism—that the Advisory Committee is comfortable being subject to shorter retention periods.
- Kevin Martin suggested that, while it may be possible to define categories of less serious misconduct subject to a reduced retention period and more serious misconduct subject to a longer retention period for all public employees, there may be a middle category of misconduct for which the decision whether that conduct is more or less serious depends on the employee's specific role, for example, as a law enforcement officer, teacher or nurse. Judy Meyer agreed, noting that while being tardy may not be a serious matter for some employees, a law enforcement officer's tardiness might have significant public safety effects. Relatedly, Chair Sheehan inquired whether the Advisory Committee should ask the Education, Criminal Justice and Public Safety and Health and Human Services committees to weigh in on the types of misconduct each believes should be considered more or less serious for the public employees within that committee's jurisdiction.
- Expressing concern that it may be impossible to define "less serious" as opposed to "more serious misconduct," especially given the different roles of public employees and circumstances in which the misconduct arises, Julie Finn suggested the Advisory Committee instead focus on the degree of discipline ultimately imposed under the progressive discipline systems utilized by public employers.

Advisory Committee members generally agreed that additional input should be obtained from multiple stakeholders before a final decision is made regarding the adjustment of records retention schedules for public employee disciplinary decisions. Members wonder whether it makes the most sense to craft recommendations to the State Archivist and have her work with the Archives Advisory Board to solicit broader stakeholder input; to propose legislation for the Judiciary Committee, which will then be able to gather additional perspectives through the public hearing process; or instead to itself continue studying and soliciting public comment on this issue over the next year.

Advisory Committee members agreed that they do not have sufficient information to make final decisions on these issues at this time and requested the following additional information to assist in its deliberations on these issues at the December 4 meeting:

- The statutory definition of the types of misconduct that disqualify someone from receiving unemployment benefits; this definition may serve as a potential model for distinguishing between more and less serious misconduct for records retention purposes.
  - Staff will provide this definition in advance of the December 4 meeting.
- Types of progressive discipline that may be imposed on employees at both the state and municipal levels of government and additional information about how collective bargaining agreements affect both the types of discipline that may be imposed and the time periods for retention of those disciplinary records.
  - Staff will provide examples of law enforcement agency collective bargaining agreement language reviewed by the Advisory Committee last year as well as an example of the relevant provisions of a current state employee contract in advance of the December 4 meeting.
  - Staff will invite representatives of Maine Municipal Association and the State's Bureau of Human Resources to provide information at the December 4 meeting regarding progressive discipline for employees as well as information regarding the entity's experience with collective bargaining agreements and arbitration.
  - Staff will also invite a representative of the Office of the Attorney General to explain how collective bargaining agreements affect record retention schedules and to address any questions from Advisory Committee members at the December 4 meeting.

### **Public Comment on Disciplinary Records of Public Employees**

Attorney Marcus Wraight provided written comments via email in advance of the meeting on the issue of disciplinary records of public employees. This comment was distributed to RTKAC committee members. No members of the public attended the meeting in person or registered to provide public comment remotely through the Zoom platform.

### **Next meeting**

The next meeting is scheduled for **Monday, December 4, 2023 @ 1:00 p.m.** in State House Room 228.

The meeting was adjourned at 3:06 p.m.

Table of Contents

	Page
Executive Summary .....	i
I. Introduction.....	
II. Committee Duties.....	
III. Recent Court Decisions Related to Freedom of Access Issues.....	
IV. Actions Related to Recommendations Contained in Seventeenth Annual Report Right to Know Advisory Committee Subcommittees.....	
V. Committee Process.....	
VI. Recommendations.....	
VII. Future Plans .....	
 <b>Appendices</b> <i>[will be included in final draft report]</i>	
A. Authorizing legislation: 1 MRSA §411	
B. Membership list	
C. Correspondence from RTKAC <i>[to be added if any]</i>	
D. Recommended legislation to amend previously-enacted public records exceptions <i>[to be added if any]</i>	
E. Public records exceptions reviewed in 2023 for which no statutory change is recommended	
F. Recommended legislation <i>[to be added if any]</i>	

## EXECUTIVE SUMMARY

This is the eighteenth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The members are appointed by the Governor, the Chief Justice of the Supreme Judicial Court, the Attorney General, the President of the Senate and the Speaker of the House of Representatives.

As in previous annual reports, this report includes a brief summary of the legislative actions taken in response to the Advisory Committee's January 2023 recommendations and a summary of relevant Maine court decisions from 2023 on the freedom of access laws. This report also summarizes several topics discussed by the Advisory Committee that did not result in a recommendation or further action.

For its eighteenth annual report, the Advisory Committee makes the following recommendations:

*[Add recommendations approved at 12/4 meeting]*

In 2024, the Right to Know Advisory Committee will continue to discuss the unresolved issues identified in this report, including *[to be added]*. The Advisory Committee will also continue to provide assistance to the Joint Standing Committee on Judiciary relating to proposed legislation affecting public access. The Advisory Committee looks forward to another year of activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations included in this report.

## I. INTRODUCTION

This is the eighteenth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The Advisory Committee's authorizing legislation, located at Title 1, section 411, is included in **Appendix A**.

More information on the Advisory Committee, including meeting agendas, meeting materials and summaries of meetings and its previous annual reports can be found on the Advisory Committee's webpage at <http://legislature.maine.gov/right-to-know-advisory-committee>. The Office of Policy and Legal Analysis provides staffing to the Advisory Committee when the Legislature is not in regular or special session.

The Right to Know Advisory Committee has 18 members. Currently, there is one vacancy. The chair of the Advisory Committee is elected by the members. Current Advisory Committee members are:

Rep. Erin Sheehan	House member of Judiciary Committee, appointed by the Speaker of the House
Sen. Anne Carney	Senate member of Judiciary Committee, appointed by the President of the Senate
Amy Beveridge	Representing broadcasting interests, appointed by the President of the Senate
Jonathan Bolton	Attorney General's designee
Vacant <i>[following passing of James Campbell]</i>	Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House
Justin Chenette	Representing the public, appointed by the President of the Senate
Lynda Clancy	Representing newspaper and other press interests, appointed by the President of the Senate
Linda Cohen	Representing municipal interests, appointed by the Governor
Julie Finn	Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court
Betsy Fitzgerald	Representing county or regional interests, appointed by the President of the Senate
Chief Michael Gahagan	Representing law enforcement interests, appointed by the President of the Senate
Kevin Martin	Representing state government interests, appointed by the Governor
Judy Meyer	Representing newspaper publishers, appointed by the Speaker of the House

Tim Moore	Representing broadcasting interests, appointed by the Speaker of the House
Kim Monaghan	Representing the public, appointed by the Speaker of the House
Eric Stout	A member with broad experience in and understanding of issues and costs in multiple areas of information technology, appointed by the Governor
Cheryl Saniuk-Heinig	A member with legal or professional expertise in the field of data and personal privacy, appointed by the Governor
Victoria Wallack	Representing school interests, appointed by the Governor

The complete membership list of the Advisory Committee, including contact information, is included in **Appendix B**.

By law, the Advisory Committee must meet at least four times per year. During 2023, the Advisory Committee met five times: on September 18, October 2, October 23, November 6 and December 4. In accordance with the Advisory Committee's remote participation policy, Advisory Committee meetings were conducted in a hybrid manner. Meetings were remotely accessible to the public through the Legislature's website.

## II. COMMITTEE DUTIES

The Right to Know Advisory Committee was created to serve as a resource and advisor about Maine's freedom of access laws. The Advisory Committee's specific duties include:

- ❑ Providing guidance in ensuring access to public records and public proceedings;
- ❑ Serving as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know;
- ❑ Supporting the provision of information about public access to records and proceedings via the Internet;
- ❑ Serving as a resource to support training and education about Maine's freedom of access laws;
- ❑ Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the state of Maine's freedom of access laws and the public's access to public proceedings and records;
- ❑ Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;

- ❑ Examining inconsistencies in statutory language and proposing clarifying standard language; and
- ❑ Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public.

In carrying out these duties, the Advisory Committee may conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss and consider solutions to problems concerning access to public proceedings and records.

The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws. The Advisory Committee is pleased to work with the Public Access Ombudsman, Brenda Kielty. Ms. Kielty is a valuable resource to the public and public officials and agencies.

### **III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES**

By law, the Advisory Committee serves as the central source and coordinator of information about Maine’s freedom of access laws and the people’s right to know. In carrying out this duty, the Advisory Committee believes it is useful to include in its annual reports a digest of recent developments in case law relating to Maine’s freedom of access laws. For this annual report, the Advisory Committee has identified and summarized the following Maine Supreme Judicial Court decisions related to freedom of access issues.

*[to be added]*

### **IV. ACTIONS RELATED TO COMMITTEE RECOMMENDATIONS CONTAINED IN SEVENTEENTH ANNUAL REPORT**

The Right to Know Advisory Committee made the following recommendations in its Seventeenth Annual Report. The legislative actions taken in 2023 as a result of those recommendations are summarized below.

<p><b>Recommendation:</b> Amend certain provisions of law in Titles 23, 24 and 24-A relating to previously-enacted public records exceptions</p>	<p><b>Action:</b> <i>LD 1207, An Act to Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions</i>, was enacted as Public Law 2023, ch. 123.</p>
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<p><b>Recommendation:</b> Enact legislation to revise the membership of the Archives Advisory Board to include a member representing journalists, newspapers, broadcasters and other news media interests</p>	<p><b>Action:</b> LD 133 was enacted as Public Law 2023, ch. 24, <i>An Act to Include a Representative of Newspaper and Other Press Interests on the Archives Advisory Board and to Require the Member Representing a Historical Society to Have Expertise in Archival Records</i>. As enacted, the law requires that the existing board member representing a state or local historical society have expertise in archival records and that the new member proposed by RTKAC have expertise in journalism.</p>
<p><b>Recommendation:</b> For FOAA training purposes, recommend that the Public Access Ombudsman review the Freedom of Access website and FOAA training materials to include guidance on best practices for conducting remote meetings to optimize public participation</p>	<p><b>Action:</b> Staff communicated this recommendation to the Public Access Ombudsman.</p>
<p><b>Recommendation:</b> Encourage the Maine Municipal Association, the Maine County Commissioners Association and the Maine School Management Association to develop guidance documents related to remote meetings</p>	<p><b>Action:</b> Staff shared a copy of the 17th Annual Report with representatives of these organizations and directed</p>
<p><b>Recommendation:</b> Enact legislation to amend the law related to remote participation</p>	<p><b>Action:</b> LD 1322, <i>An Act to Implement the Recommendations of the Right To Know Advisory Committee Concerning Remote Participation</i>, was enacted as Public Law 2023, ch. 158.  In addition, LD 1425, <i>An Act to Strengthen Freedom of Access Protections by Allowing Remote Meetings to Be Recorded</i>, was also enacted as Public Law 2023, ch. 185. This law requires that members of the public be allowed to record a meeting with remote participation using the electronic platform used to conduct the meeting, as long as additional costs are not incurred and the recording does not interfere with the orderly conduct of the proceeding.</p>



<p><b>Recommendation:</b> Recommend that the Legislature direct funding to provide grants and technical assistance to all public bodies authorized to adopt remote participation policies, including counties, municipalities, school boards and regional or other political subdivisions</p>	<p><b>Action:</b> No specific action taken by the Legislature during First Regular Session or First Special Session.</p>
<p><b>Recommendation:</b> Recommend a statutory change and the revision of the record retention schedules applicable to state, county, and municipal employee personnel records (1 member opposed; 1 member abstained)</p>	<p><b>Action:</b> LD 1397, <i>An Act to Implement the Recommendations of the Right To Know Advisory Committee Concerning Records of Disciplinary Actions Against Public Employees</i>, included the language recommended by RTKAC that would prevent a collective bargaining agreement or employment contract from overriding the records retention schedule established by the State Archivist and would require that records related to disciplinary actions be retained for a period of 20 years, with potentially shorter retention periods for less serious conduct and potentially longer retention periods for law enforcement disciplinary actions reflecting on the credibility of the officer. But, these provisions were each removed before the bill was enacted as Public Law 2023, chapter 159.</p>
<p><b>Recommendation:</b> Enact legislation to amend state and county employee personnel records statutes to align with the municipal employee personnel record statute</p>	<p><b>Action:</b> The enacted version of LD 1397, <i>An Act to Implement the Recommendations of the Right To Know Advisory Committee Concerning Records of Disciplinary Actions Against Public Employees</i>, Public Law 2023, chapter 159, implements this recommendation.</p>
<p><b>Recommendation:</b> Enact legislation to ensure that responses to FOAA requests for “personnel records” include records that have been removed from the personnel file and are otherwise retained</p>	<p><b>Action:</b> LD 1397, <i>An Act to Implement the Recommendations of the Right To Know Advisory Committee Concerning Records of Disciplinary Actions Against Public Employees</i>, included the language recommended by RTKAC to implement this recommendation. But, this</p>

	<p>language was removed before the bill was enacted as Public Law 2023, chapter 159.</p>
<p><b>Recommendation:</b>  Recommend that the State Archivist, the Maine Archives Advisory Board and legislative proposals use standardized language related to record retention in schedules developed for public bodies and consider the inclusion of definitions of terms such as “remove,” “purge” and “destroy” when they are used in record retention schedules</p>	<p><b>Action:</b>  LD 1397, <i>An Act to Implement the Recommendations of the Right To Know Advisory Committee Concerning Records of Disciplinary Actions Against Public Employees</i>, included the language recommended by RTKAC to implement this recommendation. Although this language was removed before the bill was enacted as Public Law 2023, chapter 159, the State Archivist indicated a willingness to continue working on this issue.</p>
<p><b>Recommendation:</b>  Request information from municipal, county and state law enforcement agencies regarding the prevalence and frequency of use of encrypted radio channels</p>	<p><b>Action:</b>  Staff requested that municipal, county and state law enforcement agencies participate in a survey regarding the prevalence and frequency of the use of encrypted radio channels. Several responses were received, each indicating that the responding law enforcement agencies were not using encryption. Anecdotal evidence suggests that encrypted radio channels have been used only in the Lewiston/Auburn area.</p>
<p><b>Recommendation:</b>  Recommend that the Judiciary Committee, in consultation with the Criminal Justice and Public Safety Committee, continue to discuss providing expanded access to participation in the legislative process by residents of correctional facilities, including the barriers that must be resolved to allow participation</p>	<p><b>Action:</b>  No action taken by Judiciary Committee during First Regular Session or First Special Session.</p>

## **V. COMMITTEE PROCESS**

In 2023, the Advisory Committee formed 3 subcommittees to assist in its work: Public Records Exceptions Subcommittee, Public Record Process Subcommittee and Law Enforcement Records Subcommittee. Each subcommittee discussed their assigned topics and issues thoroughly and determined whether to make recommendations for consideration by the full Advisory Committee. The deliberations of each subcommittee are summarized below. Part VI of this report contains the specific recommendations from the subcommittees that were adopted by the full Advisory Committee.

### **Public Records Exceptions Subcommittee**

*[summary of subcommittee's discussions to be added]*

### **Public Record Process Subcommittee**

*[summary of subcommittee's discussions to be added]*

### **Law Enforcement Records Subcommittee**

*[summary of subcommittee's discussions to be added]*

## **VI. RECOMMENDATIONS**

The Advisory Committee makes the following recommendations.

*[to be added after December 4, meeting]*

## **VII. FUTURE PLANS**

In 2024, the Right to Know Advisory Committee will continue to discuss the ongoing issues identified in this report, including *[to be added]*. The Advisory Committee will also continue to provide assistance to the Joint Standing Committee on Judiciary relating to proposed legislation affecting public access. The Advisory Committee looks forward to another year of activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations included in this report.

**Public Records Exceptions For Review by RTKAC in 2023:  
 Exceptions in Titles 22 and 22-A**

REF No.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
1	<a href="#">22 MRSA §17, sub-§7</a>	Title 22, section 17, subsection 7, relating to records of child support obligors	DHHS	No change	Voted 10-23-23: Accepted with no change (4-0)
2	<a href="#">22 MRSA §42, sub-§5</a>	Title 22, section 42, subsection 5, relating to DHHS records containing personally identifying medical information	DHHS	No change	Voted 10-23-23: Accepted with no change (4-0)
3	<a href="#">22 MRSA §261, sub-§7</a>	Title 22, section 261, subsection 7, relating to records created or maintained by the Maternal and Infant Death Review Panel	DHHS	No change	Voted 10-23-23: Accepted with no change (4-0)
4	<a href="#">22 MRSA §264, sub-§8</a>	Title 22, section 264, subsection 8, relating to records held by the coordinator of the Aging and Disability Mortality Review Panel	DHHS, Maine CDC	No change	Voted 10-23-23: Accepted with no change (4-0)
5	<a href="#">22 MRSA §664, sub-§1</a>	Title 22, section 664, subsection 1, relating to State Nuclear Safety Program facility licensee books and records	DHHS, Maine CDC	No change	Voted 10-23-23: Accepted with no change (4-0)
6	<a href="#">22 MRSA §666, sub-§3</a>	Title 22, section 666, subsection 3, relating to the State Nuclear Safety Program concerning the identity of a person providing information about unsafe activities, conduct or operation or license violation	DHHS, Maine CDC	No change	Voted 10-23-23: Accepted with no change (4-0)
7	<a href="#">22 MRSA §811, sub-§6</a>	Title 22, section 811, subsection 6, relating to hearings regarding testing or admission concerning communicable diseases	DHHS, Maine CDC	No change	Voted 11-28-2023 Accepted with no change (4-0)
8	<a href="#">22 MRSA §815, sub-§1</a>	Title 22, section 815, subsection 1, relating to communicable disease information	DHHS, Maine CDC	No change	Voted 10-23-23: Accepted with no change (4-0)
9	<a href="#">22 MRSA §824</a>	Title 22, section 824, relating to persons having or suspected of having communicable diseases	DHHS, Maine CDC	No change	Voted 11-28-2023 Accepted with no change (4-0)
10	<a href="#">22 MRSA §832, sub-§3</a>	Title 22, section 832, subsection 3, relating to hearings for consent to test for the source of exposure for a blood-borne pathogen	DHHS, Maine CDC	No change	Voted 10-23-23: Accepted with no change (4-0)
11	<a href="#">22 MRSA §1064</a>	Title 22, section 1064, relating to immunization information system	DHHS, Maine CDC	No change	Voted 11-28-2023 Accepted with no change (4-0)

**Public Records Exceptions For Review by RTKAC in 2023:  
 Exceptions in Titles 22 and 22-A**

REF No.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
*12	<a href="#">22 MRSA §1065, sub-§3</a>	Title 22, section 1065, subsection 3, relating to manufacturer and distributor reports on distribution of influenza immunizing agents	Repealed	Repealed	No Action Needed
13	<a href="#">22 MRSA §1233</a>	Title 22, section 1233, relating to syphilis reports based on blood tests of pregnant women	DHHS, Maine CDC	No change	Voted 10-23-23: Accepted with no change (4-0)
14	<a href="#">22 MRSA §1317-C, sub-§ 3</a>	Title 22, section 1317-C, subsection 3, relating to information regarding the screening of children for lead poisoning or the source of lead exposure	DHHS, Maine CDC	No change	Voted 11-28-2023 Accepted with no change (4-0)
15	<a href="#">22 MRSA §1413</a>	Title 22, section 1413, relating to information that directly or indirectly identifies individuals included in amyotrophic lateral sclerosis (ALS) registry	DHHS, Maine CDC	No change	Voted 11-28-2023 Accepted with no change (4-0)
*16	<a href="#">22 MRSA §1494</a>	Title 22, section 1494, relating to occupational disease reporting	Repealed in recent budget bill, Public Law 2023, chapter 412, Part UU	Repealed	No Action Needed
*17	<a href="#">22 MRSA §1555-D, sub-§ 1</a>	Title 22, section 1555-D, subsection 1, relating to lists maintained by the Attorney General of known unlicensed tobacco retailers	Repealed	Repealed	No Action Needed
18	<a href="#">22 MRSA §1596</a>	Title 22, section 1596, relating to abortion and miscarriage reporting	DHHS, Maine CDC	No change	Voted 11-28-2023 Accepted with no change (4-0)
19	<a href="#">22 MRSA §1597-A, sub-§6</a>	Title 22, section 1597-A, subsection 6, relating to a petition for a court order consenting to an abortion for a minor	DHHS	No response received	Voted 11-28-2023 Accepted with no change (4-0)
*20	<a href="#">22 MRSA §1696-D</a>	Title 22, section 1696-D, relating to the identity of chemical substances in use or present at a specific location if the substance is a trade secret	Repealed	Repealed	No Action Needed
*21	<a href="#">22 MRSA §1696-F</a>	Title 22, section 1696-F, relating to the identity of a specific toxic or hazardous substance if the substance is a trade secret	Repealed	Repealed	No Action Needed

**Public Records Exceptions For Review by RTKAC in 2023:  
 Exceptions in Titles 22 and 22-A**

REF No.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
22	<a href="#">22 MRSA §1711-C, sub-§2</a>	Title 22, section 1711-C, subsection 2, relating to hospital records concerning health care information pertaining to an individual	DHHS, Division of Licensing and Certification	No change	Voted 10-23-23: Accepted with no change (4-0)
23	<a href="#">22 MRSA §1714-E, sub-§5</a>	Title 22, section 1714-E, subsection 5, relating to department records regarding determination of credible allegation of MaineCare fraud	DHHS, Division of Licensing and Certification	No change	Voted 11-9-23: Accepted with no change (3-0; Monaghan absent)
^23-A	<a href="#">22 MRSA §1717, sub-§15 (as enacted by PL 2023, c. 309)</a>	<i>Title 22, section 1717, subsection 15, relating to personally identifying information or health information created or obtained in connection with DHHS licensing or quality assurance activities</i>	DHHS	Program has not been implemented yet, no change	Voted 11-28-23: Accepted with no change (3-0; JB abstained)
24	<a href="#">22 MRSA §1816, sub-§2</a>	Title 22, section 1816, subsection 2, paragraph B, relating to survey findings of health care accrediting organization, including deficiencies and work plans, of hospitals reported to DHHS	DHHS, Division of Licensing and Certification	No change	Voted 11-28-2023 Accepted with no change (4-0)
25	<a href="#">22 MRSA §1828</a>	Title 22, section 1828, relating to Medicaid and licensing of hospitals, nursing homes and other medical facilities and entities	DHHS, Division of Licensing and Certification	No change	Voted 11-28-2023 Accepted with no change (4-0)
*26	<a href="#">22 MRSA §1848, sub-§1</a>  <a href="#">Repealed by PL 2023, c. 37</a>	<a href="#">Title 22, section 1848, subsection 1, relating to documents and testimony given to Attorney General under Hospital and Health Care Provider Cooperation Act</a>	<a href="#">All of chapter 405-A, including section 1848 repealed by Public Law 2023, c. 37</a>	<a href="#">All of chapter 405-A, including section 1848 repealed by Public Law 2023, c. 37</a>	<a href="#">No Action Needed</a>
27	<a href="#">22 MRSA §2140, sub-§17</a>	Title 22, section 2140, subsection 17, relating to information collected by DHHS regarding compliance with Maine Death with Dignity Act	DHHS, Maine CDC	No change	Voted 11-9-23: Accepted with no change (3-0; Monaghan absent)
28	<a href="#">22 MRSA §2153-A, sub-§1</a>	Title 22, section 2153-A, subsection 1, relating to information provided to the Department of Agriculture by the US Department of Agriculture, Food Safety and Inspection Service	Dept. of Agriculture, Conservation and Forestry	No change	Voted 11-9-23: Accepted with no change (3-0; Monaghan absent)

**Public Records Exceptions For Review by RTKAC in 2023:  
 Exceptions in Titles 22 and 22-A**

REF No.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
29	<a href="#">22 MRSA §2153-A, sub-§2</a>	Title 22, section 2153-A, subsection 2, relating to information provided to the Department of Agriculture by the US Food and Drug Administration	Dept. of Agriculture, Conservation and Forestry	No change	Voted 11-9-23: Accepted with no change (3-0; Monaghan absent)
*30	<a href="#">22 MRSA §2425, sub-§8</a>	Title 22, section 2425, subsection 8, paragraph A, relating to information submitted by qualifying and registered patients under the Maine Medical Use of Marijuana Act (MMUMA)	Repealed	Repealed	No Action Needed
*31	<a href="#">22 MRSA §2425, sub-§8</a>	Title 22, section 2425, subsection 8, paragraph B, relating to information submitted by primary caregivers and physicians under the MMUMA	Repealed	Repealed	No Action Needed
*32	<a href="#">22 MRSA §2425, sub-§8</a>	Title 22, section 2425, subsection 8, paragraph C, relating to list of holders of registry identification cards under the MMUMA	Repealed	Repealed	No Action Needed
*33	<a href="#">22 MRSA §2425, sub-§8</a>	Title 22, section 2425, subsection 8, paragraph F, relating to information contained in dispensary information that identifies a registered patient, the patient's physician and the patient's registered primary caregiver under the MMUMA	Repealed	Repealed	No Action Needed
*34	<a href="#">22 MRSA §2425, sub-§8</a>	Title 22, section 2425, subsection 8, paragraph G, relating to information that identifies applicants for registry identification card, registered patients, registered primary caregivers and registered patients' physicians under the MMUMA	Repealed	Repealed	No Action Needed
*35	<a href="#">22 MRSA §2425, sub-§8</a>	Title 22, section 2425, subsection 8, paragraph J, relating hearing on revocation of a registry identification card under MMUMA unless card is revoked	Repealed	Repealed	No Action Needed

**Public Records Exceptions For Review by RTKAC in 2023:  
Exceptions in Titles 22 and 22-A**

REF No.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
36	<a href="#">22 MRSA §2425-A, sub-§12</a>	Title 22, section 2425-A, subsection 12, relating to applications and supporting information submitted by patients, caregivers and providers under the MMUMA	DAFS, Office of Cannabis Policy	Amend by repealing exception	Tabled to 12-4-23; will review proposed draft amendment
*37	<a href="#">22 MRSA §2698-A, sub-§7</a>	Title 22, section 2698-A, subsection 7, relating to prescription drug marketing costs submitted to the Department of Health and Human Services	Repealed	Repealed	No Action Needed
*38	<a href="#">22 MRSA §2698-B, sub-§5</a>	Title 22, section 2698-B, subsection 5, relating to prescription drug information provided by the manufacturer to the Department of Health and Human Services concerning price	Repealed	Repealed	No Action Needed
39	<a href="#">22 MRSA §2706, sub-§4</a>	Title 22, section 2706, relating to prohibition on release of vital records in violation of section; recipient must have “direct and legitimate interest” or meet other criteria	DHHS, Maine CDC	No change	Voted 11-9-23: Accepted with no change (4-0)
40	<a href="#">22 MRSA §2706-A, sub-§6</a>	Title 22, section 2706-A, subsection 6, relating to adoption contact files	DHHS, Maine CDC	No change	Voted 11-9-23: Accepted with no change (4-0)
41	<a href="#">22 MRSA §2769, sub-§4</a>	Title 22, section 2769, subsection 4, relating to adoption contact preference form and medical history form	DHHS, Maine CDC	No change	Voted 11-9-23: Accepted with no change (4-0)
42	<a href="#">22 MRSA §3022, sub-§8,12,13, 14</a>	Title 22, section 3022, subsections 8, 12,13 and 14, relating to medical examiner information	Office of the Attorney General	No change	Voted 11-28-2023 AMEND (3-1; LC opposed)
43	<a href="#">22 MRSA §3034, sub-§2</a>	Title 22, section 3034, subsection 2, relating to the Chief Medical Examiner missing persons files	Office of the Attorney General	No change	Voted 11-9-23: Accepted with no change (4-0)
44	<a href="#">22 MRSA §3109, sub-§2-A</a>	Title 22, section 3109, subsection 2-A, relating to personal information of TANF participants surveyed by DHHS	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
45	<a href="#">22 MRSA §3174-X, sub-§6</a>	Title 22, section 3174-X, relating to records of the Medicaid ombudsman program	DHHS	No response received	Voted 11-28-2023 Accepted with no change (4-0)



**Public Records Exceptions For Review by RTKAC in 2023:  
Exceptions in Titles 22 and 22-A**

REF No.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
46	<a href="#">22 MRSA §3188, sub-§4</a>	Title 22, section 3188, subsection 4, relating to the Maine Managed Care Insurance Plan Demonstration for uninsured individuals	DHHS	No change	Voted 11-9-23: Accepted with no change (4-0)
47	<a href="#">22 MRSA §3192, sub-§13</a>	Title 22, section 3192, subsection 13, relating to Community Health Access Program medical data	DHHS	No change	Voted 11-9-23: Accepted with no change (4-0)
48	<a href="#">22 MRSA §3292</a>	Title 22, section 3292, relating to use of confidential information for personnel and licensure actions	DHHS, Office of Family and Child Services, Office of Aging and Disability Services and Division of Licensing and Certification; and DFPR, Office of Professional and Occupational Regulation	No Change	Voted 11-9-23: Accepted with no change (4-0)
49	<a href="#">22 MRSA §3293</a>	Title 22, section 3293, relating to confidential information provided to state employees and Bureau of Human Resources	DAFS	No response received	Voted 11-28-2023 Accepted with no change (4-0)
50	<a href="#">22 MRSA §3294</a>	Title 22, section 3294, relating to confidential information provided to professional and occupational licensing boards	DFPR, Office of Professional and Occupational Regulation	No change, but recommends consideration of clarification	Tabled to 12-4-23; will review proposed draft amendment
51	<a href="#">22 MRSA §3295</a>	Title 22, section 3295, relating to confidential information provided in unemployment compensation proceedings related to state employment	Department of Labor	No change	Voted 11-28-23: Accepted with no change (3-0; JB abstained)
52	<a href="#">22 MRSA §3474, sub-§1</a>	Title 22, section 3474, subsection 1, relating to adult protective records	DHHS, Office of Aging and Disability Services	No change	Voted 11-9-23: Accepted with no change (4-0)
53	<a href="#">22 MRSA §3762, sub-§3</a>	Title 22, section 3762, subsection 3, relating to TANF recipients	DHHS, Office of Family Independence	No change	Voted 11-28-2023 Accepted with no change (4-0)
54	<a href="#">22 MRSA §4007, sub-§1-A</a>	Title 22, section 4007, subsection 1-A, relating to a protected person's current or intended address or location in the context of child protection proceeding	DHHS, Office of Family Independence	No change, but is this an exception?	Voted 11-9-23: Accepted with no change (4-0)

**Public Records Exceptions For Review by RTKAC in 2023:  
 Exceptions in Titles 22 and 22-A**

REF No.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
55	<a href="#">22 MRSA §4008, sub-§1</a>	Title 22, section 4008, subsection 1, relating to child protective records	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
56	<a href="#">22 MRSA §4008, sub-§3-A</a>	Title 22, section 4008, subsection 3-A, relating to records of child death and serious injury review panel	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
57	<a href="#">22 MRSA §4008, sub-§3-A</a>	Title 22, section 4008, subsection 3-A, relating to records of child death and serious injury review panel	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
58	<a href="#">22 MRSA §4018, sub-§4</a>	Title 22, section 4018, subsection 4, relating to information about a person delivering a child to a safe haven	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
59	<a href="#">22 MRSA §4019, sub-§9</a>	Title 22, section 4019, subsection 9, relating to files, reports, records, communications and working papers used or developed by child advocacy centers	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
60	<a href="#">22 MRSA §4021, sub-§3</a>	Title 22, section 4021, subsection 3, relating to information about interviewing a child without prior notification in a child protection case	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
61	<a href="#">22 MRSA §4036, sub-§1-A</a>	Title 22, section 4036, subsection 1-A, relating to child protective case documents in a proceeding awarding parental rights and responsibility	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
62	<a href="#">22 MRSA §4087-A, sub-§6</a>	Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
63	<a href="#">22 MRSA §4306</a>	Title 22, section 4306, relating to general assistance	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
64	<a href="#">22 MRSA §5307, sub-§2</a>	Title 22, section 5307, subsection 2, relating to fingerprint-based criminal background check for “high-risk” MaineCare providers	DHHS	No change	Voted 11-9-23: Accepted with no change (4-0)

**Public Records Exceptions For Review by RTKAC in 2023:  
 Exceptions in Titles 22 and 22-A**

REF No.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
65	<a href="#">22 MRSA §5328, sub-§1</a>	Title 22, section 5328, subsection 1, relating to community action agencies records about applicants and providers of services	DHHS	No response received	Voted 11-28-2023 Accepted with no change (4-0)
66	<a href="#">22 MRSA §5409, sub-§1 and 2</a>	Title 22, section 5409, subsections 1 and 2, relating to records held by the Maine Health Insurance Marketplace	DHHS, Office of the Health Insurance Marketplace	No change	Voted 11-28-2023 AMEND (4-0)
67	<a href="#">22 MRSA §7250, sub-§1</a>	Title 22, section 7250, subsection 1, relating to the Controlled Substances Prescription Monitoring Program	DHHS, Office of Behavioral Health	No change	Voted 11-9-23: Accepted with no change (4-0)
68	<a href="#">22 MRSA §7703, sub-§2</a>	Title 22, section 7703, subsection 2, relating to facilities for children and adults	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
69	<a href="#">22 MRSA §8110, sub-§5</a>	Title 22, section 8110, subsection 5, relating to criminal history record information for employees of a children's residential care facility, an emergency children's shelter, a shelter for homeless children or any group home that provides care for children	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
70	<a href="#">22 MRSA §8302-C, sub-§1</a>	Title 22, section 8302-C, subsection 1, relating to criminal history record information for child care providers and child care staff members	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
71	<a href="#">22 MRSA §8707</a>	Title 22, section 8707, relating to records of the Maine Health Data Organization	Maine Health Data Organization	No change	Voted 11-28-23: Accepted with no change (3-0; JB abstained)
72	<a href="#">22 MRSA §8714, sub-§1</a>	Title 22, section 8714, subsection 1, relating to protected health information in data collected by MHDO	Maine Health Data Organization	No change	Voted 11-28-23: Accepted with no change (3-0; JB abstained)
73	<a href="#">22 MRSA §8715-A, sub-§2</a>	Title 22, section 8715-A, subsection 2, relating to cancer-incidence registry data and vital statistics data reported to MHDO	Maine Health Data Organization	No change	Voted 11-28-23: Accepted with no change (3-0; JB abstained)

**Public Records Exceptions For Review by RTKAC in 2023:  
 Exceptions in Titles 22 and 22-A**

REF No.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
74	<a href="#">22 MRSA §8733</a>	Title 22, section 8733, relating to information provided to MHDO by a prescription drug manufacturer, wholesale drug distributor or pharmacy benefits manager	Maine Health Data Organization	No change	Voted 11-28-23: Accepted with no change (3-0; JB abstained)
75	<a href="#">22 MRSA §8754</a>	Title 22, section 8754, relating to medical sentinel events and reporting	DHHS, Division of Licensing and Certification	No change	Voted 11-9-23: Accepted with no change (4-0)
76	<a href="#">22 MRSA §8824, sub-§ 2</a>	Title 22, section 8824, subsection 2, relating to the newborn hearing program	DHHS, Maine CDC	No change	Voted 11-9-23: Accepted with no change (4-0)
77	<a href="#">22 MRSA §8943</a>	Title 22, section 8943, relating to the registry for birth defects	DHHS, Maine CDC	No change	Voted 11-9-23: Accepted with no change (4-0)
78	<a href="#">22 MRSA §9061</a>	Title 22, section 9061, relating to criminal background check record or other personally identifiable information for direct access worker	DHHS, Division of Licensing and Certification	No change	Voted 11-9-23: Accepted with no change (4-0)

\*Statute Repealed since last review in 2015—no RTKAC action needed

^Exception enacted by 131<sup>st</sup> Legislature

**Maine State Government  
Contract Language from Personnel Files Articles**

<p style="text-align: center;"><b>MSEA-SEIU</b> Maine Service Employees Association</p>	<p style="text-align: center;"><b>AFSCME</b> American Federation of State, County, and Municipal Employees</p>	<p style="text-align: center;"><b>MSLEA</b> Maine State Law Enforcement Association</p>	<p style="text-align: center;"><b>MSTA</b> Maine State Troopers Association</p>	<p style="text-align: center;"><b>FOP-MSLES</b> Fraternal Order of Police Maine State Law Enforcement Supervisors</p>
<p>Upon request of an employee, records of warnings, reprimands, and preventable accident reports shall be removed from personnel files after three (3) years from the date of the occurrence provided that the employee has had no further disciplinary action since that date. Upon request of an employee, records of suspensions and disciplinary demotions shall be removed from personnel files after five (5) years from the date of the occurrence provided that the employee has had no further disciplinary action since that date. However, records of disciplinary suspensions resulting from patient/client abuse, neglect or mistreatment shall not be removed from personnel files under the provisions of this paragraph.</p>	<p>Upon written request of an employee, records of reprimands and preventable accident reports shall be removed from personnel files after three (3) years from the date of the occurrence provided that the employee has had no further disciplinary action since that date. Upon written request of an employee, records of suspensions and disciplinary demotions shall be removed from personnel files after five (5) years from the date of the occurrence provided that the employee has had no further disciplinary action since that date. However, records of disciplinary suspensions resulting from patient/client/inmate/student abuse, neglect or mistreatment and sexual harassment shall not be removed from personnel files under the provisions of this paragraph.</p>	<p>Upon request of an employee, records of reprimands and preventable accident reports shall be removed from personnel files after three (3) years from the date of the occurrence provided that the employee has had no further disciplinary action since that date. Upon request of an employee, records of suspensions and disciplinary demotions shall be removed from personnel files after five (5) years from the date of the occurrence provided that the employee has had no further disciplinary action since that date. However, records of disciplinary suspensions resulting from patient/client abuse, neglect or mistreatment shall not be removed from personnel files under the provisions of this paragraph.</p>	<p>Upon request of an employee, corrective memos shall be removed from his/her personnel file after one (1) year from the date of the corrective memo if the employee has received no further discipline. Upon request of an employee, reprimands shall be removed from his/her personnel file after three (3) years from the date of the reprimand if the employee has received no further discipline. Upon request of an employee, suspensions shall be removed from his/her personnel file after five (5) years from the date of the suspension if the employee has received no further discipline. Upon written request of an employee sixty (60) days prior to his/her retirement date, corrective memos, reprimands and suspensions shall be removed from his/her</p>	<p>Upon request of an employee, records of warnings, reprimands, and preventable accident reports shall be removed from personnel files after three (3) years from the date of the occurrence provided that the employee has had no further disciplinary action since that date. Upon request of an employee, records of suspensions and disciplinary demotions shall be removed from personnel files after five (5) years from the date of the occurrence provided that the employee has had no further disciplinary action since that date. However, records of disciplinary suspensions resulting from patient/client abuse, neglect or mistreatment shall not be removed from personnel files under the provisions of this paragraph.</p>

<p>Records of warnings and reprimands shall be deemed to be removed from the personnel files after three (3) years from the date of the occurrence provided that the employee has had no further discipline since that date.</p> <p>Records of preventable accident reports shall be deemed to be removed from the personnel files after three (3) years from the date of the occurrence.</p>			<p>personnel file if the employee has received no further discipline within the past three (3) years, notwithstanding the time frames stated above. However, if the employee then decides not to retire, the removed record of discipline will be returned to his/her personnel file.</p> <p>The Chief of the State Police or his/her designee shall comply with the law and reporting requirements of the Maine Criminal Justice Academy in reporting acts of misconduct by employees. Only a synopsis of the alleged misconduct shall be provided to the Academy Board, not the complete investigation file, unless the Department is required to do otherwise under the law.</p>	<p>Records of warnings and reprimands shall be deemed to be removed from the personnel files after three (3) years from the date of the occurrence provided that the employee has had no further discipline since that date.</p> <p>Records of preventable accident reports shall be deemed to be removed from the personnel files after three (3) years from the date of the occurrence.</p>
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**MAINE MUNICIPAL  
ASSOCIATION SINCE 1936**

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To: Honorable Members of the Right to Know Advisory Committee  
Fr: Rebecca Graham, Senior Legislative Advocate, Maine Municipal Association  
Re: Municipal Perspective on Disciplinary Records Retention & Disclosure  
Date: December 4, 2023

Maine Municipal Association is a voluntary membership organization that represents the interest of municipal government. The Association has a core belief that local government is a fundamental component of a democratic system of government. MMA is dedicated to assisting local governments, and the people who serve in local government, in meeting the needs of their citizens and serving as responsible partners in the intergovernmental system. MMA's services include advocacy, education, and information, professional legal and personnel advisory services, and group insurance self-funded programs.

My understanding is that the committee would like an overview of the municipal experience regarding the structure of progressive discipline for municipal employees as well as information around the nexus of collective bargaining agreements and arbitration around disciplinary matters. As you may imagine, each department of a full-time municipality may have multiple bargaining agreements centered on each service level expectation, pay and benefits so there is no single approach to how such agreements are established.

For this reason, I will try to address some of the common elements in collective bargaining agreements and ways in which the "notwithstanding" might misunderstand the role terms like "purge" or "removal" play in progressive discipline. For contract purposes, records retention pertains to the amount of time a record can be used against an employee for the purposes of escalating disciplinary action, and do not play a role in the retention of records in many municipalities. Most contracts have language that state records removed from an employee's personnel file may be stored elsewhere in the city's records. A stellar employee who has an unexpected period of behavioral issues is far more likely to be adversely impacted by minor violations if retention of disciplinary records must be kept in a personnel file, instead of simply must be retained.

Additionally, complainants or victims of behavioral issues deserve some consideration with regard to public disclosure to prevent a chilling effect on the reporting of conduct that could otherwise go unseen by supervisors without such disclosure. Final records of discipline should either include a victim or complainant automatic anonymity or the right to not be included by name in the final action. Final records of discipline also include records that the individual employee or complainant or victim may have no knowledge have occurred and require no written reply process. For instance, a colleague may be privy to conduct towards a third party that is below an agency standard through conversation or disclosure from the employee and may report that to a supervisor without the third party's knowledge or consent.

Progressive discipline is a fact and situationally dependent process that must bear a reasonable relationship to the violation. This makes categorizing types of records slightly more nuanced than severity of conduct alone. Even counseling, and verbal warnings are recorded in writing and would be considered a record of final action for the purposes of these records, but unlike the other written documentation do not have a built in appeal or employee reply inclusion because the intent is educate and provide information to the individual around the expected standard and make sure there is not a failure in communication from the supervisor or training system. This is also an important first step in establishing a pattern of behavior that may need additional management steps. Severity of offenses can lead to skipping this process entirely and move directly to a more severe disciplinary action.

For public safety employees, disciplinary action can be triggered by conduct that no other municipal employee would be subject to, and thus the “purging” or “removal” of disciplinary records relate more to how long they can be used against the employee for the progressive escalation of discipline. For instance, failure to adequately pass annual physical fitness tests, preventable spills or unintentional damage to municipal equipment or wear all appropriate pieces of a uniform can reach a severity leading to termination through escalating disciplinary action if they become repetitive or are adjacent to other violations in a certain time period.

A common pattern for escalating discipline is; (1) counseling an employee about the performance deficit and conveying of the expected standard and assessing if more training may be needed or if the employee may be unaware of the standard; (2) verbal warning to the employee usually detailing the unsatisfactory performance and notice that continued failure will lead to harsher discipline; (3) a written reprimand which includes the cause for the action, outlines the corrective action that must be taken with time frames and possible action should the employee fail to comply. This action also has a right of reply by the employee that is also recorded and placed in the file. More than one written warning may be issued but a “final written warning” is usually labeled as such to designate further that next actions will be significant should they occur within a specific time frame this often bears a nexus to both the severity of the offense and the timeline for removal from the employee’s file. Likewise, a “first written warning” may also be issued based on the violation.

All these pieces are recorded in an employee’s record, even when verbal.

Written warnings provide a statement of the disciplinary actions to be taken along with the effective date, a statement as to why the discipline has been chosen and the nature of the violation along with any supporting material or evidence where appropriate. Additional escalating steps include disciplinary demotions, temporary removal from duty that may include pay or be unpaid, and immediate discharge. Each one of these steps includes a notice with any salary related sanctions, and discharge may include a hearing notice with the facts of the situation, notice of employee rights to appeal. Often the final discharge is signed off and approved by the municipal head such as the city manager or administrator.

Arbitration for employee disciplinary action is an intensive process that can overturn a disciplinary decision if the employee in question can illustrate that similar behavior in other employees was not equally disciplined, or that the action did not bear a reasonable or proportional relationship to the violation. The parties to arbitration have a time limited procedure to agree on the arbitrator who will review all the facts of the case and related disciplinary processes to determine if there was either a technical deficit such as the lack of recording of counselling or verbal warning standards, or an unfair application of standards. The decision of the arbitrator is often outlined as binding and the costs are usually borne equally by both parties. The final decision of the arbitrator can be a removal of the records from the personnel file that led to the termination and full reinstatement of the employee to duty.



I hope this helps clarify some of the municipal reality around employee disciplinary records. I am happy to answer or find answers to any additional questions you may have.