

**Subcommittee of the  
RIGHT TO KNOW ADVISORY COMMITTEE  
Public Records Exceptions Subcommittee**

**Monday, September 30, 2024, 1 pm**

Location: Cross Building, Room 202 (Hybrid Meeting)  
Public access also available through the Maine Legislature's livestream:  
<https://legislature.maine.gov/Audio/#202>

1. Introductions
2. Review of selected existing exceptions
3. Discussion: proposed exception offered by the Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations
4. Confirm future meeting dates
5. Adjourn

**STATUTE:** [32 MRSA §3275-A, sub-§1, paragraph F](#)

**AGENCY:** Board of Licensure in Medicine

**CONTACT PERSON:** Timothy Terranova, Executive Director

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

BOLIM currently receives approximately 100 criminal background checks related to the Interstate Medical Licensure Compact each year. In accordance with its policy required by the Federal Bureau of Investigations, BOLIM views this information on a secure site and does not download or print any data. The information is recorded in BOLIM's database as a notation of passed or failed, with no additional explanation. To date this exception has not been cited in denying a FOAA request.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

BOLIM supports continuation of this exception. Criminal background check information is protected by federal and state statutes. Failure to have this exception would cause BOLIM to lose its ability to access this information and impact BOLIM's ability to participate and/or remain in the Interstate Medical Licensure Compact as well as expose it to potential litigation for enforcement by the Compact.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the

FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

BOLIM believes the language is clear and sufficient.

4. Does your agency recommend changes to this exception?

BOLIM does not recommend any changes to this exception.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** [32 MRSA §3296](#)

**AGENCY:** Board of Licensure in Medicine

**CONTACT PERSON:** Timothy Terranova, Executive Director

**RETURN BY:** September 20, 2024

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BOLIM does not administer this public records exception but is impacted by its application. Because it does not administer the exception it has not cited the exception in denying a request for production of covered records which would also be confidential under 24 M.R.S. § 2510. The information covered by the exception is important for the Board's obligation of protecting the health and safety of Maine citizens. BOLIM frequently obtains records made confidential by this exception in connection with reports made pursuant to 24 M.R.S. § 2506, and the entity producing the records cite the exception in approximately 15% to 20% of requests.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

BOLIM supports the continuation for the exception. Failure to continue this exception will result in legal challenges to BOLIM's ability to obtain the information. Institutions who provide the already confidential information will not release it if it loses confidentiality upon receipt by BOLIM.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

On occasion a healthcare entity has refused to provide such records to BOLIM in connection with its investigation. When that occurs, it may require BOLIM to enforce a subpoena through court action. Fortunately, that has not yet occurred. The language of the exception is clear.

4. Does your agency recommend changes to this exception?

BOLIM does not recommend any changes to the exception.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Maine Medical Association - Andrew MacLean, [amaclean@mainemed.com](mailto:amaclean@mainemed.com)

Maine Hospital Association – Jeff Austin, [jaustin@themha.org](mailto:jaustin@themha.org)

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** [32 MRSA §3300-A](#)

**AGENCY:** Board of Licensure in Medicine

**CONTACT PERSON:** Timothy Terranova, Executive Director

**RETURN BY:** September 20, 2024

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## QUESTIONS

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Records subject to this exception include license application records and investigative/complaint records. This exception is cited in nearly every request made with respect to a specifically named licensee regarding redactions of the information.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

BOLIM supports continuation of this exception. This section was created after personal contact information was provided by another licensing board who used it to inappropriately contact a licensee. Licensees should be able to protect their health care information disclosed to BOLIM just like every other Maine citizen. In addition, there is a great deal of literature regarding the stigmatization of health care professionals who seek mental health services. Allowing the public access to that type of information may adversely impact health care professionals seeking and obtaining necessary care.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the

FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

BOLIM believes that the language does not clearly cover all personal information; for example, personal email addresses are not specifically identified but could also be inappropriately used to harass or inappropriately contact a licensee.

4. Does your agency recommend changes to this exception?

BOLIM recommends that personal email addresses be specifically identified in this exception. Most healthcare professionals licensed by BOLIM have a personal and professional email. Many use their personal email address for communications from BOLIM and their professional address for communications with patients.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Maine Medical Association - Andrew MacLean, [amaclean@mainemed.com](mailto:amaclean@mainemed.com)

Maine Hospital Association – Jeff Austin, [jaustin@themha.org](mailto:jaustin@themha.org)

Maine Physicians Health Program – Guy Cousins, [GCousins@mma-mphp.org](mailto:GCousins@mma-mphp.org)

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** [32 MRSA §3300-H, sub-§2](#)

**AGENCY:** Board of Licensure in Medicine

**CONTACT PERSON:** Timothy Terranova, Executive Director

**RETURN BY:** September 20, 2024

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This section creates additional requirements prior to producing records that delays public records responses and impacts virtually all requests.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

BOLIM opposes the continuation of this exception. This exception creates an additional administrative burden with little to no change to the process. Once the record is prepared, notice is sent to the licensee. Licensees do not have a good understanding of the law and reasons exceptions can be granted notwithstanding BOLIM's practice of incorporating the statute's language in the communications. Licensees often request that additional information be redacted that is not confidential by statute and BOLIM must spend time and resources educating the licensee on the law and why their request is not covered under the law. This can lead to frustration and dissatisfaction on the part of the licensee.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the



FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

The language is clear. Please see question 2 for BOLIM's concerns.

4. Does your agency recommend changes to this exception?

BOLIM recommends removal of this statute.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Maine Medical Association - Andrew MacLean, [amaclean@mainemed.com](mailto:amaclean@mainemed.com)

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** [32 MRSA §18509, sub-§6](#)

**AGENCY:** Board of Licensure in Medicine

**CONTACT PERSON:** Timothy Terranova, Executive Director

**RETURN BY:** September 20, 2024

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All statutory provisions of the Interstate Medical Licensure Compact may not be superseded by other conflicting state law. 32 M.R.S. § 18525. This exception is a mandatory piece of the Interstate Medical Licensure Compact Law. Any change to this statutory provision risks enforcement litigation by the Compact, 32 M.R.S. § 18528, or required withdrawal from the compact. 32 M.R.S. § 18522. All Board investigative records associated with a Compact licensee would be subject to this exception; however, those same records are also confidential pursuant to other statutory provisions, including but not limited to, 24 M.R.S. § 2510 and 10 M.R.S. § 8003-B. To date this exception has not been cited in denying a FOAA request.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

BOLIM supports continuation of this exception. Changing this provision would impact Maine's ability to participate in the compact and subject it to potential litigation. In addition, maintaining the confidentiality of such records assists the Board in conducting its responsibilities that includes investigation of the conduct of its licensees without exposing confidential healthcare information. Release of such information would impede

the Board's investigative processes and risk significant interference with its obligation to protect the public.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

No problems have occurred in the application of this section and the records subject to the exception are clear. Issues associated with removing this provision are cited above.

4. Does your agency recommend changes to this exception?

BOLIM does not recommend any changes.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

As of September 10, 2024, 1,373 of Maine physicians are currently licensed through the Compact. This does not include osteopathic physicians licensed through the Compact.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE: 26 MRSA §1037, sub-§2**

**AGENCY: Maine Community Colleges**

**CONTACT PERSON: Becky Smith, Director of Government and Community Relations, (207) 629-4015, [bsmith@maineccc.edu](mailto:bsmith@maineccc.edu)**

**RETURN BY: September 20, 2024**

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Thank you.

## QUESTIONS

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**Paragraph A of subsection (2) requires certain institutions, including the Maine Community College System, to provide bargaining agents of a bargaining unit access to certain personal information about members of the unit that the bargaining agent exclusively represents. Such personal information includes home addresses, personal email addresses, and cell phone numbers.**

**Paragraph B of subsection (2) confirms that the following information is confidential, and not a public record, and shall not be disclosed, except as required pursuant to Paragraph A: (1) Home addresses, home or personal telephone numbers, personal e-mail addresses and dates of birth of employees; (2) Names of employees within a bargaining unit; and (3) Communications between a bargaining agent and its members.**

**This exception protects personal information of members of a bargaining unit in the event of a public request for disclosure but allows the disclosure of certain personal**

**information to a member's bargaining agent. M CCS regularly provides employee/member information to the respective bargaining agents as required by statute and in accordance with negotiated collective bargaining agreements. M CCS receives 1-2 requests, per month, from outside third parties requesting the disclosure of employee personal information. M CCS cites the statutory language to protect its employee's personally identifiable information from public disclosure to third parties.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**M CCS supports the continuation of this exception to protect the privacy of M CCS employees.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**M CCS has not had any problems in applying this exception and does not have any issues with the current language.**

4. Does your agency recommend changes to this exception?

**M CCS does not have any recommended changes to this exception.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**The University of Maine System and Maine Maritime Academy are the other stakeholders subject to this exception.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**M CCS does not have any further information to provide at this time.**

STATUTE: [27 MRSA §121](#)

AGENCY: Maine Community College System

CONTACT PERSON: Becky Smith, Director of Government and Community Relations, (207) 629-4015, [bsmith@mainecc.edu](mailto:bsmith@mainecc.edu)

RETURN BY: 9/20/2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

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**This exception protects the confidentiality of library records except in limited circumstances. There have not been any known FOAA requests for such records in recent years, so the exception has not been invoked. Historically, the majority of public records requests made to MCCS are primarily for records related to a contract award.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**MCCS supports the continuation of this exception as there should be a vehicle available to protect such records in the event of a request. As an academic institution, students and employees are expected to develop, and test, knowledge. MCCS is concerned of the chilling effect on employee and student educational endeavors should their library records be made available for public disclosure.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the

FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**MCCS has not had any problems in applying this exception due to the rarity of requests that fall within its scope and does not have any issues with the current language.**

4. Does your agency recommend changes to this exception?

**MCCS does not have any recommended changes.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**The public libraries in Maine, the Maine State Library, the Law and Legislative Reference Library, the University of Maine System, and the Maine Maritime Academy are the other stakeholders subject to this exception.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**MCCS does not have any further information to provide at this time.**

**STATUTE:** [27 MRSA §377](#)

**AGENCY:** Maine State Museum; Maine Historic Preservation Commission

**CONTACT PERSON:** Bernard Fishman ([bernard.fishman@maine.gov](mailto:bernard.fishman@maine.gov)), Kirk Mohney ([kirk.mohney@maine.gov](mailto:kirk.mohney@maine.gov))

**RETURN BY:** 9/20/2024

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Thank you.

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27 MRSA § 377 controls public access to information (description, location, attributes, etc.) held by state agencies or the University of Maine System about any archaeological site in the state. The purpose of this statute is to protect the sites from unlawful excavation, harm, and destruction. The statute designates the directors of the Maine Historic Preservation Commission and the Maine State Museum to adopt rules establishing standards and procedures for qualified researchers to obtain this data:

94-089 HISTORIC PRESERVATION COMMISSION AND MAINE STATE  
MUSEUM

Chapter 100: RULES FOR IMPLEMENTING AN ACT TO PRESERVE  
MAINE'S ARCHAEOLOGICAL HERITAGE

**SUMMARY:** These rules set forth the standards and procedures for access to records in the possession of the Maine Historic Preservation Commission, the State Museum Bureau, the Bureau of Parks and Recreation and other State

Right to Know Advisory Committee  
13 State House Station Augusta, Maine 04333  
Telephone: (207) 287-1670



agencies or the University of Maine containing information regarding the locations or other attributes of archaeological sites.

These rules are jointly adopted by the Historic Preservation Commission and Maine State Museum but are codified under the Historic Preservation Commission's umbrella number of 94-089.

Maine Historic Preservation Commission staff apply the rule several times a month on average when responding to requests for archaeological site location or content information from archaeologists not on the SHPO Approved Lists or members of the public. Staff often summarize information that is relevant to the request and explain why archaeological site location information being public is a threat to the site integrity. FOA requests or other administrative action, or litigation, is rare (with no cases on file).

Student or academic research requests for access to these data are often granted, after the applicant signs an agreement limiting the use of the sensitive site data (such as in scale of maps that show the data).

2. Please state whether your agency supports or opposes continuation of this exception and explain the reasons for that position.

The Maine Historic Preservation Commission strongly supports continuation of this exception. It is used frequently and has been effective in protecting sites from looting or other damage due to unwarranted public exposure of archaeological site locations.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

The Maine Historic Preservation Commission has not had any problems with application of the exemption. The records are clearly described, and the language is sufficiently clear.

4. Does your agency recommend changes to this exception?

No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Other state agencies as named in the statute (Maine State Museum), University of Maine, and State agencies with responsibility for archaeological site management such as the Bureau of Parks, should be considered stakeholders.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

The Advisory Committee recommended revisions to strengthen the statute and protection in a review in 2012, and those changes were subsequently adopted by the Legislature.

STATUTE: [26 MRSA §934](#)

AGENCY: **State Board of Arbitration and Conciliation, Maine Labor Relations Board**

CONTACT PERSON: **Henry Fouts**

RETURN BY: **September 20, 2024**

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**One function of the State Board of Arbitration and Conciliation (BAC) is to offer conciliation services, upon request, to help settle labor disputes between an employer and employees. This public records exception applies to the confidential report issued by the BAC to the Governor and the Executive Director of the Maine Labor Relations Board (MLRB) subsequent to performing such services. In practice, the BAC primarily provides arbitration and fact-finding services, and rarely performs pure conciliation services as described in this statute. As such, this public records exception rarely comes into play. As the agency providing administrative oversight for the BAC, requests for these records, and denials thereof, are extremely infrequent to nonexistent.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Our agency supports continuation of this exception, because confidentiality is important for creating an environment in which both sides to a dispute may feel free**

**to communicate their positions openly and thus more effectively find amicable resolution.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOIA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We have encountered no problems with this exception, and find its wording sufficient.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Some stakeholders that may have relevant input are Maine's public sector unions, e.g., Maine Service Employees Association, Maine Education Association, Maine State Law Enforcement Association, Fraternal Order of Police and AFSCME.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**This exception is fairly limited, providing exceptions to allow release of the report by the Governor and MLRB if there is no resolution of the underlying dispute and the information would be in the public interest, and also allows disclosure to the Attorney General's Office if there appears to have been any violation of law.**

STATUTE: [26 MRSA §939](#)

AGENCY: **State Board of Arbitration and Conciliation, Maine Labor Relations Board**

CONTACT PERSON: **Henry Fouts**

RETURN BY: **September 20, 2024**

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**This public records exception applies to information disclosed by parties to the State Board of Arbitration and Conciliation (BAC) during the course of its duties providing arbitration, fact-finding and conciliation services. These records could include communications and other internal records of the employers and employee unions. Requests for this information are rare, so this exception is not often applied.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Our agency supports the continuation of this exception because the privacy it affords parties encourages their participation in these alternative dispute resolution services.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**The agency has encountered no problems with this exception and the statutes are sufficiently clear regarding its application.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Some stakeholders that may have relevant input are Maine's public sector unions, e.g., Maine Service Employees Association, Maine Education Association, Maine State Law Enforcement Association, Fraternal Order of Police and AFSCME.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**This is an important public records exception for the operation of the agency's alternative dispute resolution processes as established by statute.**

**STATUTE:** [26 MRSA §965, sub-§2](#)

**AGENCY:** Maine Labor Relations Board

**CONTACT PERSON:** Henry Fouts

**RETURN BY:** September 20, 2024

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**This public records exception appears in the Municipal Public Employees Labor Relations Law and applies to any information disclosed by either party to a dispute to the Panel of Mediators (within the Maine Labor Relations Board (MLRB)) or any of its members in the performance of its duties. Requests for these records, and thus the agency's denial of such requests, are infrequent.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Our agency supports continuation of this exception, because confidentiality is important for creating an environment in which both sides to a dispute may feel free to communicate their positions openly and thus more effectively find amicable resolution through the mediation process.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We have encountered no problems with this exception and find its wording sufficient.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Some stakeholders that may have relevant input are Maine's public sector unions, e.g., Maine Service Employees Association, Maine Education Association, Maine State Law Enforcement Association, Fraternal Order of Police and AFSCME.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**Confidentiality is essential to effective mediation.**



**STATUTE:** [26 MRSA §975, sub-§2](#)

**AGENCY:** Maine Labor Relations Board

**CONTACT PERSON:** Henry Fouts

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**This public records exception appears in the Municipal Public Employees Labor Relations Law and applies in the context of required disclosures of employee information by a public employer to a bargaining agent. Our agency does not administer or apply this provision.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Our agency takes no position with respect to this public records exception.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**Our agency does not administer the concerned disclosures and our agency takes no position regarding the wording of the exception.**

4. Does your agency recommend changes to this exception?

**Our agency takes no position with respect to this public records exception.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Some stakeholders that may have relevant input are Maine's municipal, county and school district employers, as well as public sector unions, e.g., Maine Education Association, Maine State Law Enforcement Association, Fraternal Order of Police and AFSCME.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**Our agency has no further information to provide the Committee.**

**STATUTE:** [26 MRSA §979-D, sub-§2](#)

**AGENCY:** Maine Labor Relations Board

**CONTACT PERSON:** Henry Fouts

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**This public records exception appears in the State Employees Labor Relations Act and applies to any information disclosed by either party to a dispute to the Panel of Mediators (within the Maine Labor Relations Board (MLRB)) or any of its members in the performance of its duties. Requests for these records, and thus the agency's denial of such requests, are infrequent.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Our agency supports continuation of this exception, because confidentiality is important for creating an environment in which both sides to a dispute may feel free to communicate their positions openly and thus more effectively find amicable resolution through the mediation process.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We have encountered no problems with this exception, and find its wording sufficient.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Some stakeholders that may have relevant input are Maine's public sector unions, e.g., Maine Service Employees Association, Maine Education Association, Maine State Law Enforcement Association, Fraternal Order of Police and AFSCME.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**Confidentiality is essential to effective mediation.**

**STATUTE:** [26 MRSA §979-T, sub-§2](#)

**AGENCY:** Maine Labor Relations Board

**CONTACT PERSON:** Henry Fouts

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**This public records exception appears in the State Employees Labor Relations Act and applies in the context of required disclosures of employee information by a public employer to a bargaining agent. Our agency does not administer or apply this provision.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Our agency takes no position with respect to this public records exception.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**Our agency does not administer the concerned disclosures and our agency takes no position regarding the wording of the exception.**

4. Does your agency recommend changes to this exception?

**Our agency takes no position with respect to this public records exception.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**The State of Maine's Bureau of Human Resources generally, or more specifically the Office of Employee Relations within the Bureau, may have input on this exception. Other stakeholders include public sector unions, e.g., Maine Service Employees Association, Maine State Law Enforcement Association and AFSCME.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**Our agency has no further information to provide the Committee.**

**STATUTE:** [26 MRSA §1026, sub-§2](#)

**AGENCY:** Maine Labor Relations Board

**CONTACT PERSON:** Henry Fouts

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**This public records exception appears in the University Employees Labor Relations Act and applies to any information disclosed by either party to a dispute to the Panel of Mediators (within the Maine Labor Relations Board (MLRB)) or any of its members in the performance of its duties. Requests for these records, and thus the agency's denial of such requests, are infrequent.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Our agency supports continuation of this exception, because confidentiality is important for creating an environment in which both sides to a dispute may feel free to communicate their positions openly and thus more effectively find amicable resolution through the mediation process.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We have encountered no problems with this exception, and find its wording sufficient.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Some stakeholders that may have relevant input are the University of Maine System, Maine Community College System and Maine Maritime Academy, as well as public sector unions, e.g., Maine Service Employees Association, Maine Education Association, Maine State Law Enforcement Association, Fraternal Order of Police and AFSCME.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**Confidentiality is essential to effective mediation.**



**STATUTE:** [26 MRSA §1285, sub-§2](#)

**AGENCY:** Maine Labor Relations Board

**CONTACT PERSON:** Henry Fouts

**RETURN BY:** 9/20/2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**This public records exception appears in the Judicial Employees Labor Relations Act and applies to any information disclosed by either party to a dispute to the Panel of Mediators (within the Maine Labor Relations Board (MLRB)) or any of its members in the performance of its duties. Requests for these records, and thus the agency's denial of such requests, are infrequent.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Our agency supports continuation of this exception, because confidentiality is important for creating an environment in which both sides to a dispute may feel free to communicate their positions openly and thus more effectively find amicable resolution through the mediation process.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We have encountered no problems with this exception, and find its wording sufficient.**

4. Does your agency recommend changes to this exception?

**No.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Some stakeholders that may have relevant input are the Administrative Office of the Courts, as well as public sector unions, e.g., Maine Service Employees Association, Maine Education Association, Maine State Law Enforcement Association, Fraternal Order of Police and AFSCME.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**Confidentiality is essential to effective mediation.**

**STATUTE: 32 MRSA §11305, sub-§3**

**AGENCY: Office of Securities**

**CONTACT PERSON: Jesse Devine, Securities Administrator**

**RETURN BY: September 20, 2024**

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**32 M.R.S. § 11305 is part of the Maine Commodity Code ("Code"), which is administered by the Securities Administrator ("Administrator"). Subsection (3) provides that information "collected, assembled or maintained by the administrator" pursuant to the Code is public information and "available for the examination of the public" with the following exceptions:**

- **Information obtained in private investigations pursuant to Section 11301;**
- **Information made confidential by rule or order of the Administrator; and**
- **Information obtained from federal agencies which may not be disclosed under federal law.**

**The first exception is for information obtained by the administrator in private investigations pursuant to Section 11301. Section 11301 provides the Administrator with the authority under the Code to "make investigations, within or outside this State, as the administrator finds necessary or appropriate" in order to determine whether any person has violated the Code, or in order to enforce the Code. This exception is narrowly tailored and is consistent with the generally accepted principle that materials gathered by regulatory and law enforcement agencies during an investigation that may result in administrative, disciplinary, civil or criminal**

sanctions are not public records. This not only ensures the integrity of investigations but also preserves the privacy rights of individuals who file complaints with the Office of Securities (“Office”) concerning an alleged violation of the Code, and of those individuals or organizations that may be the subject of a pending investigation but not a formal action.

Subsection (3) also protects information designated as confidential by the Administrator by order or rule, and information that is obtained by the Administrator from federal agencies that may not be disclosed under federal law. To my knowledge, no orders or rules have been issued by the current or prior Administrators to designate other information as confidential. If a rule were to be issued by the Administrator, it would go through the rulemaking process under the Maine Administrative Procedures Act and therefore be subject to public scrutiny and input before being adopted. The exception for information obtained by the Office from federal agencies is self-executing under federal law and only stands to reinforce the confidentiality already provided.

It should also be noted that subsection (4) of Section 11305 permits the Administrator to disclose information deemed confidential under subsection (3) to other regulatory or law enforcement agencies. Additionally, should formal administrative, disciplinary or criminal proceedings be initiated by the Office, any information obtained during the investigation that the Office intended to use in support of its case would be provided to the respondent in the course of discovery and would become public when introduced in the proceeding against the respondent.

To my knowledge, the exemption has not been applied or cited as the reason for a denial of a request for information.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

The Office supports continuation of this exception for the reasons cited above. Notably, Section 11305(3) starts with the fundamental presumption that information obtained by the Administrator is public and provides a narrowly tailored exception for investigative materials, materials deemed confidential by order or rule of the Administrator, and materials obtained from the federal government and deemed confidential under federal law.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**To my knowledge, this exemption has not been applied. The Office believes the language of the statute is sufficiently clear in describing the records that are intended to be covered by the exemption.**

4. Does your agency recommend changes to this exception?

**The Office does not recommend any changes to this exception.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Stakeholders would include the general public and individuals and entities who, whether as a purchaser or seller, engage in transactions involving commodities.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**None.**

**STATUTE:** [32 MRSA §16524](#)

**AGENCY:** Maine Office of Securities

**CONTACT PERSON:** Jesse Devine, Securities Administrator

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**32 M.R.S. § 16524 is part of the Maine Uniform Securities Act ("MUSA"), specifically subchapter 5-A, adopted in 2022, which established the Securities Restitution Assistance Fund ("Fund") to provide financial assistance to victims of securities fraud or other violations of MUSA. Both MUSA and the Fund are administered by the Securities Administrator ("Administrator"). Section 16524 states that personal information contained in an application for restitution assistance from the Fund is not subject to disclosure to the extent such information is covered by MUSA Section 16607(2)(E), which exempts as "nonpublic records" any social security number and residential addresses and telephone numbers contained in documents filed with the Office. Thus, Section 16524 merely confirms that certain personally identifiable information of those applying for restitution assistance from the Fund receive the same protections extended to the personal information of other constituents, including individuals licensed by the Office.**

**It should be noted that pursuant to Section 16608(1) the Administrator may disclose nonpublic records to specified regulatory or law enforcement agencies when in the public interest. Prior to disclosure under Section 16608(1), the Administrator may**

**require the requesting agency to certify that comparable protections exist in that jurisdiction to preserve the integrity, confidentiality and security of the information.**

**To my knowledge, the exemption has not been applied or cited as the reason for a denial of a request for information.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**The Office supports continuation of this exception for the reasons cited above.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**To my knowledge, this exemption has not been applied. The Office believes the language of the statute is sufficiently clear in describing the records that are intended to be covered by the exemption.**

4. Does your agency recommend changes to this exception?

**The Office does not recommend any changes to this exception.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Stakeholders would include the general public and individuals who file applications for restitution assistance from the Fund.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**None.**

**STATUTE:** [32 MRSA §16607, sub-§2](#)

**AGENCY:** Maine Office of Securities

**CONTACT PERSON:** Jesse Devine, Securities Administrator

**RETURN BY:** September 20, 2024

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Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**32 M.R.S. § 16607(2) is part of the Maine Uniform Securities Act, adopted in 2005, which is administered by the Securities Administrator ("Administrator"). Section 16607 starts with the basic presumption that except as otherwise provided "records obtained by the administrator or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing or report, are public records and are available for public examination" in accordance with Maine's Freedom of Access Act.**

**Nine categories of records are then identified by subsection (2) as "nonpublic" records. These exceptions are narrowly tailored and can be generally characterized as designed to preserve the regulatory functions of the Office of Securities ("Office"), confidential financial information, and confidential personal information.**

**Specifically, the statute makes nonpublic: records gathered during investigations and audits conducted by the Office; trade secrets or confidential financial information required to be filed with the Office if confidentiality is requested by the provider; the contents of records *not* required to be filed with the Office, but**



provided to the Office with the understanding that confidentiality would be preserved; records designated as confidential by other regulatory or law enforcement agencies; social security numbers and residential addresses and phone numbers of licensees; licensing records maintained on a federal database that have been expunged; the Office's internal personnel rules and practices; working documents of the Office; and documents to the extent that disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.

It should be noted that pursuant to subsection (3) of Section 16607, disclosure of nonpublic records by the Administrator is permitted when the disclosure is for the purpose of a civil, administrative or criminal investigation, action or proceeding or if the disclosure is made to another regulatory or law enforcement agency specified in Section 16608(1). Prior to disclosure under Section 16608(1), the Administrator may require the requesting agency to certify that comparable protections exist in that jurisdiction to preserve the integrity, confidentiality and security of the information.

Subsection (4) of Section 16607 also permits the Administrator to disclose to the public any information obtained in connection with an investigation that would otherwise be nonpublic information, but only if the Administrator determines that disclosure is necessary for the protection of investors or the public.

This exemption has been applied infrequently since its adoption in 2005. The Office estimates that from 2007 to the present, the exemption has been invoked approximately once per year, most commonly pursuant to subsection (2)(A) to deny – in whole or in part – requests seeking records obtained in connection with an Office investigation, inspection or audit. The Office is aware of one occasion in which subsection (2)(I) was invoked to deny a records request on the basis that disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**The Office supports continuation of this exception for the reasons cited above. Notably, Section 16607 starts with the fundamental presumption that records and information obtained by the Administrator are public and provides narrowly tailored exceptions for specific types of records or information contained within documents maintained by the Office.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**The Office is not aware of any problems that have occurred in the application of this exemption. This exemption has not been broadly applied by the Office to deny access to records or information. As noted above, Section 16607(2)(A) has been cited infrequently in the denial of access to records that have been obtained by the Office during the course of an investigation, inspection or audit. Subsection (2)(I) has been cited once to avoid disclosure of information that could reasonably be expected to constitute an unwarranted invasion of personal privacy.**

**The Office has, on occasion, also received requests to treat information or records requested by the Office in connection with a securities filing or registration, but not *required* to be provided to the Office by the filer, as confidential pursuant to a request made by the filer under section 16607(2)(C). However, we are not aware that any record request has ever been denied on the basis of that exemption.**

**The Office believes the language of the statute is sufficiently clear in describing the records that are intended to be covered by the exemption.**

4. Does your agency recommend changes to this exception?

**The Office does not recommend any changes to this exception.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**Stakeholders would include the general public, individuals and entities licensed by the Office (including investment advisers, investment adviser representatives, broker-dealers, and broker-dealer agents), issuers or agents of issuers of securities, and other individuals and entities that provide sensitive information to the Office (or whose sensitive information is produced to the Office by third parties) during the course of Office investigations, audits or other regulatory activities.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**None.**

**STATUTE:** [32 MRSA §3121, sub-§1, paragraph F](#)

**AGENCY:** Board of Examiners in Physical Therapy

**CONTACT PERSON:** Anne Head

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**RESPONSE:** The Office of Professional and Occupational Regulation ("OPOR") is an umbrella agency within the Department of Professional and Financial Regulation ("DPFR"). OPOR supports thirty-eight (38) licensing boards, commissions and programs, including the Board of Examiners in Physical Therapy (the "Board"). OPOR staff administer the licensing functions of the Board, as well as process and review complaints submitted to the Board.

The agency has not yet administered or applied this exception. Starting January 1, 2025, every individual who applies to the Board for initial licensure will be required to submit FBI fingerprint-based background checks as a result of Maine joining the [Physical Therapy Licensure Compact](#) (PT Compact) (*Maine joined as of June 26, 2023, [LD 1749](#)*). As a compact state, Maine has agreed to require FBI fingerprint-based criminal background checks and use those results in making initial licensure decisions.

The Board is waiting for the FBI to approve the language contained in 32 M.R.S. § 3121. Once that approval is granted, it can start the process of using these checks in its licensure decisions. Part of the FBI's requirements for the use of these checks is that they are confidential and not disclosed to others.

While OPOR staff for this Board has not yet applied this exception or directly dealt with these records, there are OPOR staff members who are familiar with this process and this exception. Staff for the Board of Real Estate Appraisers have received the results of FBI criminal background checks since the law for that board changed in 2015. Board staff will also have the benefit of advice and guidance of the Assistant Attorney General assigned to the Board of Examiners in Physical Therapy. OPOR anticipates no issues in administering or applying this exception.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**RESPONSE:** OPOR supports continuation of this exception. The condition of confidentiality is mandated by the FBI as part of a state agency receiving the results of these background checks.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**RESPONSE:** OPOR staff for this Board has not yet applied this exception but do not anticipate any issues in its administration or application.

4. Does your agency recommend changes to this exception?

**RESPONSE:** OPOR does not recommend changes.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**RESPONSE:** Unknown.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**RESPONSE:** OPOR does not have additional input, and thanks the Committee for the opportunity to share this information.

**STATUTE:** [32 MRSA §6207-B](#)

**AGENCY:** State Board of Alcohol and Drug Counselors

**CONTACT PERSON:** Anne Head

**RETURN BY:** September 20, 2024

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Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**Response:** The Office of Professional and Occupational Regulation ("OPOR") is an umbrella agency within the Department of Professional and Financial Regulation ("DPFR"). OPOR provides staff and support to thirty-eight (38) licensing boards, commissions and programs, including the State Board of Alcohol and Drug Counselors (the "Board"). OPOR staff administer the licensing functions of the Board, as well as processes and reviews complaints submitted to the Board.

The records subject to this exception are any that contain the address of an individual who is licensed by the Board. The online OPOR licensing system (ALMS) prompts an individual to provide a "mailing address." As the system does not distinguish whether the individual is supplying a "business" or "nonbusiness" address, OPOR staff treats all addresses provided by a licensee to the Board as confidential under this exception. The licensee's address appears in their licensing file, on correspondence exchanged with the licensee, and potentially on records supplied by the individual in support of their licensing application. A licensee may include their address on a response to a complaint filed against them.

The exception is applied in response to FOAA requests and when administering the complaint process.

Regarding FOAA requests, OPOR staff receives routine requests for lists of licensees and their information (for example, continuing education providers will ask for contact information for all active licensees). On occasion, staff receives a FOAA request for a particular licensee's file. When one of these requests is received, the records are provided without the address of the licensee (the telephone number and e-mail address we have on file would be provided). Less frequently, a complaint may be filed against a licensee and some of the correspondence exchanged may contain the licensee's address. That address is not shared with the complainant and is redacted from any copy of the file that is provided to a FOAA requester after the investigation has concluded as set forth in 10 M.R.S. § 8003-B(1).

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**RESPONSE:** OPOR supports continuation of this exception. The enacted law summary for PL 2017, c. 265 states the exception was created to “protect the confidentiality of the home address of all individuals licensed or certified by the Department of Professional and Financial Regulation, State Board of Alcohol and Drug Counselors.” When balancing the importance of the purpose of FOAA with the privacy and safety of individuals who are providing essential counseling services and need to maintain important boundaries with their clients, OPOR views this exception as reasonable and narrowly tailored to not defeat the purposes of FOAA.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**RESPONSE:** As noted in the response to Question 1, OPOR asks a licensee to provide their mailing address, and makes no distinction as to whether the address provided is a “business” or “nonbusiness” address. Therefore, OPOR does not disclose any address it has on file for a licensee. The elimination of the qualifier “nonbusiness” may better align the exception with the practice of the agency.

4. Does your agency recommend changes to this exception?

**RESPONSE:** In addition to removing the word “nonbusiness” from the exception, OPOR recommends that the Committee review the FOAA exception in 32 M.R.S. § 7032 for the Board of Social Worker Licensure. Many individuals are duly licensed by the Board of Alcohol and Drug Counselors and the Board of Social Worker licensure. It would be preferable if the confidentiality exceptions to FOAA contained in the respective laws for each of these boards were aligned.

OPOR recommends that the exception contained in 32 M.R.S. § 6207-B to be amended to be identical to the one in 32 M.R.S. § 7032. The latter makes no distinction between “business” and “nonbusiness” address, also designates the individual’s phone number as confidential, and contains the disclaimer that the FOAA exception does not prohibit board staff from disclosing the address and phone number as necessary to perform the duties and functions of the board (for example, making mandated reports to the National Practitioner Data Bank). Moreover, the language in Section 7032 applies to both “licensees” and “applicants” for licensure. It would be best practice to extend the benefit of confidentiality of this information to applicants for licensure as well. For example, an “applicant” could be a full-time practicing counselor in another jurisdiction who is applying for licensure by endorsement.

Lastly, Section 6207-B applies to a person “certified” under the Board’s laws. OPOR recommends eliminating the term “certified” and to exclusively use the term “licensed.” “Certification” has a different meaning than licensure, and if the Committee is considering proposed changes to this section, that would be an appropriate clean up of the language.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**RESPONSE:** The Committee may want to seek input from the appropriate professional association. In Maine, that organization is the Maine Association of Alcohol and Drug Abuse Counselors.

6. Please provide any further information that you believe is relevant to the Advisory Committee’s review.

**RESPONSE:** Over the years, OPOR has received feedback from licensees of the Board of Counseling Professionals Licensure and the Board of Examiners of Psychologists who expressed frustration that their contact information is not similarly designated confidential under Maine law. The Committee may want to review the law for these other two boards who also license behavioral health providers and consider aligning the confidentiality exception for a behavioral health licensee’s personal contact information for all four (4) of these boards (Alcohol and Drug Counselors, Social Worker Licensure, Counseling Professionals Licensure, and Examiners of Psychologists).

**STATUTE:** [32 MRSA §7032](#)

**AGENCY:** State Board of Social Worker Licensure

**CONTACT PERSON:** Anne Head

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**Response:** The Office of Professional and Occupational Regulation (“OPOR”) is an umbrella agency within the Department of Professional and Financial Regulation (“DPFR”). OPOR provides staff and support to thirty-eight (38) licensing boards, commissions and programs, including the State Board of Social Worker Licensure (the “Board”). OPOR staff administer the licensing functions of the Board, as well as processes and reviews complaints submitted to the Board.

The records subject to this exception are all those that contain the address and/or telephone number of a licensee or an applicant for licensure. The licensee's address appears in their licensing file, on correspondence exchanged with the licensee, and potentially on records supplied by the individual in support of their licensing application. A licensee may include their address on a response to a complaint filed against them.

The exception is applied in response to FOAA requests and when administering the complaint process.

As to FOAA requests, OPOR staff receives routine requests for lists of licensees and their information (for example, continuing education providers request contact information for



active licensees). On occasion, staff receives a FOAA request for a particular licensee's file. When one of these requests is received, the records are provided without the address or telephone number of the licensee that the Board has on file (the e-mail address we have on file would be provided). Less frequently, a complaint may be filed against a licensee and some of the correspondence exchanged may contain the individual's address and/or telephone number. That information is not shared with the complainant, and is redacted from any copy of the file that is provided to a FOAA requester after the investigation has concluded as set forth in 10 M.R.S. § 8003-B(1).

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**RESPONSE:** OPOR supports continuation of this exception. The title of the bill that enacted this exception, LD 1499 of the 127th Legislature, was "*An Act to Increase the Safety of Social Workers.*" When balancing the importance of the purpose of FOAA with the privacy and safety of those individuals who are providing essential social work services and need to maintain important boundaries with their clients, OPOR views this exception as reasonable and narrowly tailored so as to not defeat the purposes of FOAA.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**RESPONSE:** OPOR is unaware of any issues that have occurred in the application of this exception.

4. Does your agency recommend changes to this exception?

**RESPONSE:** OPOR does not recommend changes at this time.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**RESPONSE:** The Committee may want to contact the National Association of Social Workers – Maine Chapter for additional input (Chris McLaughlin, MSW, LCSW [CMcLaughlin.naswme@socialworkers.org](mailto:CMcLaughlin.naswme@socialworkers.org))

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**RESPONSE:** Over the years, OPOR has received feedback from licensees of the Board of Counseling Professionals Licensure and the Board of Examiners of Psychologists who expressed frustration that their contact information is not similarly designated confidential under Maine law. The Committee may want to review the law for these

other two boards who also license behavioral health providers and consider aligning the confidentiality exception for a behavioral health licensee's personal contact information for all four (4) of these boards (Alcohol and Drug Counselors, Social Worker Licensure, Counseling Professionals Licensure, and Examiners of Psychologists).

**STATUTE:** [32 MRSA §13006](#)

**AGENCY:** Maine Real Estate Commission

**CONTACT PERSON:** Anne Head

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**RESPONSE:** The current staff for the Maine Real Estate Commission is unfamiliar with the application of this exception.

The statement of fact for LD 759 for the 114th Legislature (enacted as amended as PL 1989, c. 82) provided “[t]he purpose of this bill is to encourage members of the Maine Association of REALTORS to foster professionalism and self-police through grievance and professional standards proceedings which, by written policy of the National Association of REALTORS, are to be conducted confidentially.”

The Maine Real Estate Commission operates independently and separately from the Realtors. An individual may be licensed by the Commission and need not be a Realtor.

The cited exception designates “[a]ll hearings and records of hearings conducted by the grievance committee or the professional standards committee of any state or regional professional real estate association or board” as “confidential” and “exempt from discovery.” If a complaint is filed with the Commission with respect to a licensee, an independent investigation is conducted and a separate proceeding may be brought before

the Commission. This is an administrative proceeding and the Commission does not conduct “discovery” as in civil proceedings.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**RESPONSE:** The Commission has no position on the continuation of this exception, as it applies to records of external organizations and has not been applied by Commission staff.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**RESPONSE:** Please refer to the responses to questions 1 and 2.

4. Does your agency recommend changes to this exception?

**RESPONSE:** No.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**RESPONSE:** The Maine Association of Realtors.

6. Please provide any further information that you believe is relevant to the Advisory Committee’s review.

**RESPONSE:** The Commission has no additional input, and thanks the Committee for the opportunity to share this information.

**STATUTE:** [32 MRSA §13725, sub-§8](#)

**AGENCY:** Maine Board of Pharmacy

**CONTACT PERSON:** Anne Head

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

Response: At the time of this response, the Insulin Safety Net Program has not yet been implemented by the Board of Pharmacy within the Office of Professional and Occupational Regulation.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**STATUTE:** [32 MRSA §14021, sub-§7](#)

**AGENCY:** Board of Real Estate Appraisers

**CONTACT PERSON:** Anne Head

**RETURN BY:** September 20, 2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

### QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**RESPONSE:** The Office of Professional and Occupational Regulation ("OPOR") is an umbrella agency within the Department of Professional and Financial Regulation ("DPFR"). OPOR provides staff and support to thirty-eight (38) licensing boards, commissions and programs, including the State Board of Real Estate Appraisers (the "Board"). OPOR staff administer the licensing functions of the Board, as well as processes and reviews complaints submitted to the Board.

In 2013, Maine adopted changes to the license requirements for real estate appraisers set forth by the Appraisal Qualifications Board of Appraisal Foundation. The law changes included the requirement that an appraiser be fingerprinted and undergo a background check as part of the licensing process. Confidentiality of the records is required by the FBI.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**RESPONSE:** OPOR supports continuation of this exception, as it is required for the Board's continued approval from the FBI to receive federal fingerprint-based criminal

background check results to use in making licensure decisions. The Board is mandated to require these checks under federal law.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**RESPONSE:** OPOR is not aware of any problems that have occurred in the application of this exception and it is clear the records described are intended to be confidential.

4. Does your agency recommend changes to this exception?

**RESPONSE:** OPOR does not recommend any changes. Of note is that any changes to the law would require approval from the U.S. Department of Justice, Criminal Justice Information Law Unit.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**RESPONSE:** None known.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**RESPONSE:** OPOR does not have any additional input, and thanks the Committee for the opportunity to share this information.



**STATUTE: 26 MRSA §1037, sub-§2**

**AGENCY: University of Maine System**

**CONTACT PERSON: Samantha Warren, [samantha.warren@maine.edu](mailto:samantha.warren@maine.edu)**

**RETURN BY: September 20, 2024**

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

This is an exception that is not frequently administered or applied within the University of Maine System. To the extent that the exception is applied, it is to protect (or redact) any records containing personal information about employees, such as the home addresses, home or personal telephone numbers, personal e-mail addresses, and dates of birth of such employees, as well as the names of employees within a bargaining unit and the communication between the bargaining unit agent and the members.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

The University of Maine System supports the continuation of this exception in order to protect (1) the home addresses, home or personal telephone numbers, personal e-mail addresses, and dates of birth of employees; (2) names of employees within a bargaining unit; and (3) communications between a bargaining agent and its members.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

There have been no problems that have occurred in the application of this exception. It is clear that the records described are intended to be confidential under the FOA statutes and the language of the exception sufficiently clear in describing the records that are covered.

4. Does your agency recommend changes to this exception?

The University of Maine System takes no position regarding revision to this exception, provided, however, that the exception continues to protect (1) the home addresses, home or personal telephone numbers, personal e-mail addresses, and dates of birth of employees; (2) names of employees within a bargaining unit; and (3) communications between a bargaining agent and its members.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Within the University of Maine System, the following are stakeholders whose input should be considered in the evaluation of this exception:

Jason Talbert (jason.talbert@maine.edu)

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

No additional comments.

**STATUTE:** [27 MRSA §121](#)

**AGENCY:** University of Maine System

**CONTACT PERSON:** Samantha Warren ([samantha.warren@maine.edu](mailto:samantha.warren@maine.edu))

**RETURN BY:** 9/20/2024

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 25 through 32 by the end of 2026; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

## QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

This is an exception that is not frequently administered or applied within the University of Maine System. To the extent that the exception is applied, it is to protect (or redact) any records containing personally identifiable information of library patrons, including information about students, faculty, and the general public, as well as the books and materials they have requested, obtained, or used.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

The University of Maine System supports the continuation of this exception in order to protect the personally identifiable information of library patrons, to include students, faculty, and the general public.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

There have been no problems that have occurred in the application of this exception. It is clear that the records described are intended to be confidential under the FOA statutes and the language of the exception sufficiently clear in describing the records that are covered.

4. Does your agency recommend changes to this exception?

The University of Maine System takes no position regarding revision to this exception, provided, however, that the exception continues to protect the personally identifiable information of library patrons, to include students, faculty, and the general public, as well as the books and materials they have requested, obtained, or used.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Within the University of Maine System, the following are stakeholders whose input should be considered in the evaluation of this exception:

UMS university librarians (complete list can be provided as requested)

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

The University of Maine System flags the use of the word "apply" for this Committee's consideration. While it is rare that the University of Maine System has to actively apply the exception, it is passively applied at all times in our policies and procedures for protecting personally identifiable information. The University of Maine System acknowledges that most librarians see patron privacy as an integral part of librarianship as a profession.

## Statutory Review of Proposed Public Records Exceptions Criteria Considered by Judiciary Committee

1 M.R.S. §434(2), (2-A) & (2-B)
A. Whether a record protected by the proposed exception <b>needs to be collected and maintained</b> ;
B. The <b>value</b> to the agency or official or to the public <b>in maintaining a record</b> protected by the proposed exception;
C. Whether <b>federal law</b> requires a record covered by the proposed exception to be confidential;
<i>Does the proposed public record exception meet one or more of the following (D, E, F, or G)?</i>
D. Whether the proposed exception protects an <b>individual's privacy interest</b> and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
E. Whether public disclosure puts a <b>business at a competitive disadvantage</b> and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;
F. Whether public disclosure compromises the <b>position of a public body in negotiations</b> and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;
G. Whether public disclosure <b>jeopardizes the safety</b> of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;
G-1. Whether public access to the record ensures or would ensure that members of the public are able to make <b>informed health and safety decisions</b> ;
<i>This criterion applies to all reviews:</i>
H. Whether the proposed exception is as <b>narrowly tailored</b> as possible;
I. <b>Any other criteria</b> that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.
<i>If the public records exception creates broad confidentiality for an agency:</i>
2-A. <b>Accountability review of agency or official.</b> In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria [above], determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.
2-B. <b>Accessibility of public records.</b> In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.
<b>ARCHIVES NOTE:</b> 5 MRSA §95-C(1)(C) provides that records of archival value that are transferred to the Maine State Archives for permanent retention lose their confidential status, even if the statute designates such records as confidential, when they have been in existence for 75 years.

Ariel Ricci  
Executive Director  
ariel.ricci@maine.gov



**Permanent  
Commission**  
**RACIAL, INDIGENOUS  
& TRIBAL POPULATIONS**

**To:** Right to Know Advisory Committee

**From:** Ariel Ricci, Executive Director of the Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations

**Date:** August 6, 2024

**Subject:** Personally Identifiable Information exemption

The Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations is mandated by statute to conduct research on historically disadvantaged populations, which includes sensitive individual data on finances, employment, education, and healthcare. The following page includes an extract of our statutory duties.

As we increase our capacity to conduct primary research, we have identified a barrier to fulfilling our mandate in a way that protects individual privacy. Protection of personally identifiable information is crucial to both conducting ethical research and to building trust in state agencies. We therefore request that the Right to Know Advisory Committee consider an exemption to the Free of Access Act related to personally identifiable information that we may obtain through our research and community engagement work.

I have prepared draft language after reviewing similar exemptions for other agencies, for the Committee's consideration.

### **Draft amendment**

#### **5 MRSA §25012 is enacted to read:**

**Confidentiality.** Personally identifiable information obtained in connection with the commission's duties pursuant to section 25007, subsection 1(A) and (B) and the commission's powers pursuant to subsection 2(C) are confidential and exempt from disclosure pursuant to Title 1, chapter 13. "Personally identifiable information" means information that permits the identity of an individual to whom the information applies to be able to be reasonably inferred or known by either direct or indirect means.

## **Current statutory duties**

### **§25007. Duties and powers**

#### **1. Commission duties.** The commission shall:

- A. Carry out research necessary to determine the status of historically disadvantaged racial, indigenous and tribal populations, including the study of income levels of and opportunities available to historically disadvantaged racial, indigenous and tribal populations and the examination of quantitative and qualitative data associated with those populations regarding business ownership, household assets, debts and income, housing, employment, education, health care and access to wealth, capital and benefits; [PL 2019, c. 457, §2 (NEW).]
- B. Seek public input by conducting public hearings annually to obtain information about the needs of and solutions to the problems faced by historically disadvantaged racial, indigenous and tribal populations; and [PL 2019, c. 457, §2 (NEW).]
- C. Beginning March 1, 2022, and annually thereafter, report to the Governor and the Legislature concerning the work and interests of the commission, including a summary of public comments obtained pursuant to paragraph B. [PL 2021, c. 398, Pt. RRRR, §1 (AMD).] [PL 2021, c. 398, Pt. RRRR, §1 (AMD).]

#### **2. Commission powers.** The commission may:

- A. Promote and coordinate activities on state and local levels designed to meet the problems faced by historically disadvantaged racial, indigenous and tribal populations; [PL 2019, c. 457, §2 (NEW).]
- B. Inform the public about the presence or absence of opportunities for historically disadvantaged racial, indigenous and tribal populations; [PL 2019, c. 457, §2 (NEW).]
- C. Conduct additional public hearings, conferences, workshops and other such meetings to obtain information about, discuss and publicize the needs of and solutions to the problems faced by historically disadvantaged racial, indigenous and tribal populations; [PL 2019, c. 457, §2 (NEW).]
- D. Submit to the Legislature such legislation as the commission determines appropriate for improving opportunities and eliminating disparities for historically disadvantaged racial, indigenous and tribal populations in the State; [PL 2021, c. 436, §6 (AMD).]
- E. Advise and consult with the Chief Justice of the Supreme Judicial Court and other officials of the State and the Federal Government with respect to state and federal policies, programs and other activities affecting or relating to historically disadvantaged racial, indigenous and tribal populations; and [PL 2019, c. 457, §2 (NEW).]
- F. Advise and consult with the Governor and the Legislature about, and assist them in improving, opportunities for historically disadvantaged racial, indigenous and tribal populations. [PL 2019, c. 457, §2 (NEW).] [PL 2021, c. 436, §6 (AMD).]



Maine State Legislature  
OFFICE OF POLICY AND LEGAL ANALYSIS  
13 State House Station, Augusta, Maine 04333-0013  
Telephone: (207) 287-1670

October 8, 2021

TO: Members, Right To Know Advisory Committee

FROM: Anna T. Broome, Senior Legislative Analyst  
Colleen McCarthy Reid, Senior Legislative Analyst  
Margaret J. Reinsch, Senior Legislative Analyst  
Office of Policy and Legal Analysis

Re: Report pursuant to Public Law 2019, Chapter 667, Part B, Section 8

## INTRODUCTION

Public Law 2019, Chapter 667, Part B, section 8 directs the Office of Policy and Legal Analysis, in consultation with the Office of the Revisor of Statutes and the Right to Know Advisory Committee ("RTKAC"), to examine the statutes for inconsistencies in the wording of public records exceptions, and to recommend standardized language for use in drafting statutes to clearly delineate what information is confidential and the circumstances under which that information may appropriately be released.

## "PUBLIC RECORDS"

The term "public records" is defined in the Freedom of Access Act ("FOAA"), 1 MRSA chapter 13, subchapter 1, as:

"[A]ny written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except" for the 22 specific exceptions that are contained in the lettered paragraphs of subsection 3. 1 MRSA §402, sub-§3.



The very first exception to this broad definition is “Records that have been designated confidential by statute[.]” 1 MRSA §402, sub-§3, ¶A. Most public records exceptions located outside of the Freedom of Access Act are described as “not a public record,” are designated “confidential” or include a different reference to the FOAA to indicate that the records are not available to the public.

## THE ROAD TO STANDARDIZED LANGUAGE

As required by law, the Right to Know Advisory Committee reviews existing public records exceptions in Maine statutes and makes recommendations to the Legislature whether to continue, amend or repeal those exceptions. In our work staffing the RTKAC and assisting the RTKAC when reviewing existing public records exceptions, we have identified inconsistencies and sometimes ambiguous language throughout the statutes. The Legislature has corrected the most problematic wording upon the recommendation of the RTKAC. Without having an established template, however, the RTKAC has been hesitant to seek changes for other more nuanced inconsistencies or to recommend strict compliance with standardized language. Later in this report, we recommend standardized language for use in drafting statutes.

As the Legislature recognized in Public Law 2019, chapter 667, there is great benefit to records custodians as well as the public for the laws to be crystal clear as to which records or information is subject to the public’s right to inspect and copy, and whether exceptions to that right exist. There are instances in the statutes where the law describes a record as being “not a public record” and others where the law describes a record as being “confidential.” Informally, some have suggested that the use of these alternate phrases in the statutes requires a different interpretation of their meaning:

- If the statute designates a record “confidential”: The public has no right of access, and it appears the record custodian is restricted as to who can receive, copy or inspect the record.
- If the statute says that a record is “not a public record”: The public has no right to access the record, but does the record custodian have discretion as to whether to share the record and with whom?

We have been unable to find legal authority – statutory or caselaw – to support the dichotomy represented by these informal interpretations. Many statutes over the years have been drafted to include both terms, i.e., that a record is confidential and not a public record. Such language provides implied support for the distinction, but there is no indication in any of these statutes that such wording is anything more than belt and suspenders to ensure the public is not given access to the specific record. That the difference in wording results in different interpretations appears unintentional when six of the 22 public records exceptions listed in Title 1, section 402, subsection 3, are reviewed in detail. Paragraphs H, L, M, Q, U and V<sup>1</sup> all spell out specific records that are not public records, and then explicitly authorize the sharing with or disclosure to certain individuals or entities for express purposes. If being “not a public record”

only extinguished the public’s right to access such records, and did not limit the custodian’s discretion to share the records, then the explicitly-authorized sharing or disclosure would not be necessary.

The current mix of language creates ambiguity about the intended meaning of laws governing public records exceptions, and we believe the Right to Know Advisory Committee can use this opportunity to establish consistent wording that provides clear instruction as to the treatment of otherwise public records. We are happy to help with a discussion about the intent and the wording of public records exceptions; we suggest that the following general considerations and questions be included in your analysis.

- The FOAA default: Every record in the hands of a governmental entity that is about governmental activity is a public record.
- The FOAA default: The public has a right to inspect and copy every public record.
- The Law Court has stated that exceptions to the FOAA must be strictly construed. (most recently in *Blue Sky West, LLC v. Maine Revenue Services*, 2019 ME 137)
- Question: Is a record custodian’s duty the same whether a statute provides that a record is “not a public record” or a statute designates a record as “confidential”?

## SUGGESTED LANGUAGE

We offer the following examples of suggested language for different drafting situations that relate to the confidentiality of a record that would otherwise be public and any circumstances authorizing the disclosure (or not) of that confidential record. The Office of the Revisor of Statutes was consulted to ensure the examples we suggest conform with the style and grammar conventions applied by the Office of the Revisor of Statutes to help ensure consistency throughout the statutes.

### **Designating a record as confidential**

To designate a record as confidential, there are multiple examples in the statutes where the phrase “confidential and may not be disclosed” is used.

Example from 5 MRSA §244-C, sub-§3 (first sentence only; highlighted language in yellow is redundant and not necessary):

*Except as provided in this subsection, audit working papers are confidential and may not be disclosed to any person.*

The added language in the above example describing that a record “may not be disclosed” may not be necessary. We suggest that the language of a statutory exception be drafted clearly and in a consistent manner. If a record is designated as “confidential,” it is not necessary to add language prohibiting disclosure as the intent of both phrases is the same.

Example from 18-C MRSA §9-310:

*Notwithstanding any other provision of law and except as provided in Title 22, section 2768, all court records relating to an adoption decreed on or after August 8, 1953 are confidential.*

### **Authorizing disclosure of a confidential record**

When the Legislature intends to authorize the disclosure in certain circumstances of records generally designated as confidential, we recommend that drafters include language that clearly describes when, how and to whom the confidential information may be disclosed as outlined in the examples provided below.

- **Authorizing the disclosure of a confidential record to a certain person**

When the Legislature intends that it is permissible for a confidential record to be disclosed to a certain person, the following is an example contained in current law that may be used in these circumstances.

Example from 4 MRSA §1806, sub-§2, ¶F:

*F. Any information obtained or gathered by the commission when performing an evaluation or investigation of an attorney is confidential, except that it may be disclosed to the attorney being evaluated or investigated.*

- **Authorizing the disclosure of a confidential record with permission**

When the Legislature intends that a confidential record may be shared only with permission, the following is an example contained in current law that may be used in these circumstances.

Example from 1 MRSA §538, sub-§3 (first sentence only):

*Information in records of the network manager or collected by InforME relating to the identity of or use by users of electronic services is confidential and may be released only with the express permission of the user or pursuant to court order.*

- **Authorizing the disclosure of a confidential record for certain purposes**

When the Legislature designates records as confidential, there are often situations in which it is important to share or make the information available to a limited number of people and for a limited purpose. The governmental entity is required to collect the information in order to provide services or carry out the statute, and often that information must be shared in order to meet the requirements of the statute; the authorized disclosure is limited to the listed recipients.

Example from 17-A MRSA §2108 (highlighted language in blue suggests revision described below):

***17-A MRSA §2108. Confidentiality of victim records***

**1. General rule of confidentiality.** *Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined ~~must be kept confidential~~ are confidential, subject to disclosure only as authorized in this section.*

**2. Disclosure to law enforcement or victims' service agency.** *Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined may be disclosed only to:*

- A. A state agency if necessary to carry out the statutory duties of that agency;*
- B. A criminal justice agency if necessary to carry out the administration of criminal justice or the administration of juvenile justice;*
- C. A victims' service agency with a written agreement with a criminal justice agency to provide services as a victim advocate; or*
- D. A person or agency upon request of the victim.*

This example from Title 17-A about information related to crime victims identifies specific information that the Department of Corrections collects and authorizes the sharing of that information with particular agencies or individuals that meet the listed requirements, and only for the described purposes. The interest of the public, as well as the interest of any individual other than those identified in the section, in that information is outweighed by the privacy and safety needs of the victim.

Note, however, that the FOAA uses the terminology “designated confidential by statute” as an exception to being a “public record”; we recommend changing the highlighted text to: are confidential.

- **Authorizing the disclosure of a confidential record to third parties with conditions**

There are occasions when the Legislature intends that a confidential record may be disclosed to third parties with conditions. If the Legislature intends to allow the disclosure of confidential information to third parties only when certain circumstances exist or when the recipient agrees to specific action, the Legislature should be very clear in describing the third parties to whom confidential records or information may be disclosed and what conditions apply to that disclosure.

Example from former 24-A MRSA §216, sub-§5, ¶B.

*The superintendent may disclose information that is confidential under this subsection to other jurisdictions if the recipient of the information agrees to maintain the same level of confidentiality provided under Maine law and has demonstrated that it has the legal authority to do so.*

While the above example authorizes the disclosure of confidential information to third parties, the language broadly describes those third parties and the circumstances under which the information may be disclosed. We suggest that the language should be more specific in its description of the third parties to whom the confidential information may be disclosed and the conditions or purposes of the disclosure. We suggest the use of the following example as a recommended template for drafters.

Example from 22 MRSA §2425-A, sub-§12, ¶G (highlighted language in blue suggests revision for consistency; highlighted language in yellow is redundant and not necessary)

*G. Records maintained by the department pursuant to this chapter that identify applicants for a registry identification card, registered patients, registered caregivers and registered patients' medical providers are confidential and may ~~not~~ be disclosed, **except as provided in this subsection and only** as follows:*

- (1) To department employees who are responsible for carrying out this chapter;*
- (2) Pursuant to court order or subpoena issued by a court;*
- (3) With written permission of the registered patient or the patient's guardian, if the patient is under guardianship, or a parent, if the patient has not attained 18 years of age;*
- (4) As permitted or required for the disclosure of health care information pursuant to section 1711-C;*
- (5) To a law enforcement official for verification purposes. The records may not be disclosed further than necessary to achieve the limited goals of a specific investigation; and*
- (6) To a registered patient's treating medical provider and to a registered patient's registered caregiver for the purpose of carrying out this chapter.*

- **Authorizing the disclosure of aggregated or summarized data when individual records are confidential**

There are occasions when the Legislature intends records to be confidential but also intends to permit the data from those individual records to be aggregated or summarized and made available to the public.

Example from former 20-A MRSA §6455:

*Body mass index data from students is confidential, except that a school nurse shall report the data collected to the Department of Health and Human Services in the aggregate only and may not identify an individual student.*

Example from 8 MRSA §1006, sub-§7:

*When financial and operating information, business records, business plans and marketing plans that are confidential under this section are submitted, the board and the applicant or licensee shall prepare a publicly available document that summarizes the confidential information in a manner that maximizes public access to that information.*

While the above examples authorize the release of data, we note that the language could be clearer in stating the circumstances when confidential records may be disclosed in aggregate or summary form and to whom those records may be disclosed. We suggest that the language should more fully articulate the Legislature's intent and suggest the use of the following examples as recommended templates for drafters.

Example from 22 MRSA §7250, sub-§3:

**3. Permissible disclosure of information.** *The department may provide prescription monitoring information for public research, policy or education purposes as long as all information reasonably likely to reveal the patient or other person who is the subject of the information has been removed.*

Example from 22 MRSA §8733 (highlighted language in yellow is redundant and not necessary):

*Information provided to the organization as required by this subchapter by a manufacturer, wholesale drug distributor or pharmacy benefits manager is confidential **and not a public record under Title 1, chapter 13**, except that the organization may share information:*

**1. Bureau of Insurance.** *With the Department of Professional and Financial Regulation, Bureau of Insurance, to the extent necessary for the bureau to enforce the provisions of Title 24-A, as long as any information shared is kept confidential; and*

**2. Aggregate.** *In the aggregate, as long as it is not released in a manner that allows the identification of an individual drug or manufacturer, wholesale drug distributor or pharmacy benefits manager.*

- **Making a confidential record public upon the occurrence of certain events**

Consistent with the purposes of the Freedom of Access Act to ensure all the activities of government are open to the public, sometimes the best way to tailor confidentiality

provisions as narrowly as possible is to make sure the confidentiality applies only as long as necessary. Some records need to be kept confidential while an activity or process is ongoing in order to avoid undue influence, to prevent the skewing of results or to prohibit the premature release of information until the activity or process is complete.

Example from 4 MRSA §1806, sub-§2 ¶E:

*A request for funds for expert or investigative assistance that is submitted by an indigent party or by an attorney on behalf of an indigent client is confidential. The decision of the executive director of the commission hired pursuant to section 1804, subsection 1, or the executive director's designee, to grant or deny such a request is not confidential after a case has been completed. A case is completed when the judgment is affirmed on appeal or the period for appeal has expired.*

The following example provides that complaints and investigative records of the Maine Pilotage Commission (which ensures ships coming into port have a harbor pilot) are confidential until the investigation is concluded. It explicitly states when an investigation has been concluded so it is clear when the records are available to the public.

Example from 38 MRSA §100-A

**§100-A. Confidentiality of complaints and investigative records**

**1. During investigation.** *All complaints and investigative records of the commission are confidential during the pendency of an investigation. Those records become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this section, an investigation is concluded when:*

- A. A notice of an adjudicatory hearing under Title 5, chapter 375, subchapter IV has been issued;*
- B. The complaint has been listed on a meeting agenda of the commission;*
- C. A consent agreement has been executed; or*
- D. A letter of dismissal has been issued or the investigation has otherwise been closed.*

The confidentiality protection can also be set to expire after the passage of a set period of time. The following example addresses property acquisition records held by the Department of Transportation and the Maine Turnpike Authority.

Example from 23 MRSA §63, sub-§3:

**3. Records relating to negotiations and appraisals.** *The records and correspondence relating to negotiations for and appraisals of property are public records beginning 9 months after the completion date of the project according to the*

*record of the department or Maine Turnpike Authority, except that records of claims that have been appealed to the Superior Court are public records following the award of the court.*

- **Prohibiting the disclosure of a confidential record through compulsion or judicial process**

There are occasions when the Legislature intends that a confidential record is not available to the public and is not subject to disclosure through compulsion or judicial process. If the Legislature intends to prohibit a record designated as confidential from being disclosed further as part of a legal or judicial proceeding, the Legislature should affirmatively state that the confidential record may not be disclosed in those circumstances.

Example from former 20-A MRSA §6455:

*Information that is confidential under this subsection is not subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity or admissible as evidence in any civil, criminal, judicial or administrative proceeding.*

While the above example does indirectly reference information that is confidential and states that that information is not subject to discovery, subpoena or other means of compulsion for its release, we suggest that the language should affirmatively describe the information that is confidential and then articulate that disclosure required or ordered in a legal proceeding is not permitted. We suggest the use of the following examples as recommended templates for drafters.

Example from 22 MRSA §4008, sub-§3-A:

**3-A. Confidentiality.** *The proceedings and records of the child death and serious injury review panel created in accordance with section 4004, subsection 1, paragraph E are confidential and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The commissioner shall disclose conclusions of the review panel upon request, but may not disclose data that is otherwise classified as confidential.*

Example from 24-A MRSA §962, sub-§2 (highlighted language in yellow is redundant and not necessary):

*Except as provided in this subsection, all protected valuation information is confidential, ~~must be kept confidential by the superintendent, is not a public record~~ and is not subject to subpoena or discovery or admissible in evidence in any private civil action. The superintendent may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the superintendent's official duties, including sharing the information on a confidential basis under section 216, subsection 5.*



Note, however, in the examples above, the language in one exception refers to the record being inadmissible as evidence in a civil or criminal action and one exception only refers to the record being inadmissible in a private civil action. We recommend that drafters consider the different types of legal proceedings and specifically state the proceedings to which the exception applies, e.g. civil, criminal or administrative proceedings.

Another consideration is whether a record would be within the scope of a privilege against discovery or use as evidence. The definition of “public record” in the Freedom of Access Act currently provides an exception in 1 MRSA section 402, subsection 3, paragraph B for records “that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding.” While paragraph B provides a general exception for records within the scope of a privilege, we suggest that when the Legislature is establishing an exception that prohibits the disclosure of a confidential record pursuant to subpoena, discovery or other legal means that the Legislature also consider whether a privilege may also exist with regard to that record.

## CONCLUSION

Based on our examination of existing public records exceptions, we have identified inconsistencies in and ambiguity about the intended meaning of these exceptions and have suggested standardized language and guidance for drafting public records exceptions. We believe the Right to Know Advisory Committee can use this opportunity to make recommendations for the use of standardized language in the statutes that provides clear instruction for records custodians and the public about which records are subject to the public’s right to inspect and copy, and whether exceptions to that right exist. We look forward to assisting you as you continue your discussion of this important topic.

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<sup>1</sup> From 1 MRSA Section 402, subsection 3:

H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct;

L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, “terrorism” means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to

multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure;

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure, systems and software, including records or information maintained to ensure government operations and technology continuity and to facilitate disaster recovery. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;

Q. Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the general public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials or the Department of Corrections under conditions that protect the information from further disclosure;

U. Records provided by a railroad company describing hazardous materials transported by the railroad company in this State, the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes that are in the possession of a state or local emergency management entity or law enforcement agency, fire department or other first responder, except that records related to a discharge of hazardous materials transported by a railroad company that poses a threat to public health, safety and welfare are subject to public disclosure after that discharge. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5; and

V. Participant application materials and other personal information obtained or maintained by a municipality or other public entity in administering a community well-being check program, except that a participant's personal information, including health information, may be made available to first responders only as necessary to implement the program. For the purposes of this paragraph, "community well-being check program" means a voluntary program that involves daily, or regular, contact with a participant and, when contact cannot be established, sends first responders to the participant's residence to check on the participant's well-being.

## Suggested standardized language for public records exceptions

### Summary of suggestions from Standardized Language Report Required by Public Law 2019, c. 667, part B

- ❖ **Over-arching suggestion: If not a public record, designate the record as confidential.**

- ❖ **Specific examples**

- 1. Designating a record as confidential**

*Except as provided in this subsection, audit working papers are confidential.*

- 2. Authorizing the disclosure of a confidential record to a certain person**

*F. Any information obtained or gathered by the commission when performing an evaluation or investigation of an attorney is confidential, except that it may be disclosed to the attorney being evaluated or investigated.*

- 3. Authorizing the disclosure of a confidential record with permission**

*Information in records of the network manager or collected by InforME relating to the identity of or use by users of electronic services is confidential and may be released only with the express permission of the user.*

- 4. Authorizing the disclosure of a confidential record for certain purposes**

*17-A MRSA §2108. Confidentiality of victim records*

*1. General rule of confidentiality. Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined are confidential, subject to disclosure only as authorized in this section.*

*2. Disclosure to law enforcement or victims' service agency. Records that pertain to a victim's current address or location or that contain information from which a victim's current address or location could be determined may be disclosed only to:*

*A. A state agency if necessary to carry out the statutory duties of that agency;*

*B. A criminal justice agency if necessary to carry out the administration of criminal justice or the administration of juvenile justice;*

*C. A victims' service agency with a written agreement with a criminal justice agency to provide services as a victim advocate; or*

*D. A person or agency upon request of the victim.*

- 5. Authorizing the disclosure of a confidential record to third parties with conditions**

*G. Records maintained by the department pursuant to this chapter that identify applicants for a registry identification card, registered patients, registered caregivers and registered patients' medical providers are confidential and may be disclosed, only as follows:*

*(1) To department employees who are responsible for carrying out this chapter;*

*(2) Pursuant to court order or subpoena issued by a court;*

*(3) With written permission of the registered patient or the patient's guardian, if the patient is under guardianship, or a parent, if the patient has not attained 18 years of age;*

*(4) As permitted or required for the disclosure of health care information pursuant to section 1711-C;*

## Suggested standardized language for public records exceptions

- (5) *To a law enforcement official for verification purposes. The records may not be disclosed further than necessary to achieve the limited goals of a specific investigation; and*
- (6) *To a registered patient's treating medical provider and to a registered patient's registered caregiver for the purpose of carrying out this chapter.*

### 6. Authorizing the disclosure of aggregated or summarized data when individual records are confidential

**3. Permissible disclosure of information.** *The department may provide prescription monitoring information for public research, policy or education purposes as long as all information reasonably likely to reveal the patient or other person who is the subject of the information has been removed.*

OR

*Information provided to the organization as required by this subchapter by a manufacturer, wholesale drug distributor or pharmacy benefits manager is confidential, except that the organization may share information:*

**1. Bureau of Insurance.** *With the Department of Professional and Financial Regulation, Bureau of Insurance, to the extent necessary for the bureau to enforce the provisions of Title 24-A, as long as any information shared is kept confidential; and*

**2. Aggregate.** *In the aggregate, as long as it is not released in a manner that allows the identification of an individual drug or manufacturer, wholesale drug distributor or pharmacy benefits manager.*

### 7. Making a confidential record public upon the occurrence of certain events

*A request for funds for expert or investigative assistance that is submitted by an indigent party or by an attorney on behalf of an indigent client is confidential. The decision of the executive director of the commission hired pursuant to section 1804, subsection 1, or the executive director's designee, to grant or deny such a request is not confidential after a case has been completed. A case is completed when the judgment is affirmed on appeal or the period for appeal has expired.*

OR

**1. During investigation.** *All complaints and investigative records of the commission are confidential during the pendency of an investigation. Those records become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this section, an investigation is concluded when:*

- A. A notice of an adjudicatory hearing under Title 5, chapter 375, subchapter IV has been issued;*
- B. The complaint has been listed on a meeting agenda of the commission;*
- C. A consent agreement has been executed; or*
- D. A letter of dismissal has been issued or the investigation has otherwise been closed.*

OR

**3. Records relating to negotiations and appraisals.** *The records and correspondence relating to negotiations for and appraisals of property are public records beginning 9 months after the completion date of the project according to the record of the department or Maine Turnpike Authority, except that records of claims that have been appealed to the Superior Court are public records following the award of the court.*

### 8. Prohibiting the disclosure of a confidential record through compulsion or judicial process

## Suggested standardized language for public records exceptions

*Information that is confidential under this subsection is not subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity or admissible as evidence in any civil, criminal, judicial or administrative proceeding.*

OR

***3-A. Confidentiality.** The proceedings and records of the child death and serious injury review panel created in accordance with section 4004, subsection 1, paragraph E are confidential and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The commissioner shall disclose conclusions of the review panel upon request, but may not disclose data that is otherwise classified as confidential.*

OR

*Except as provided in this subsection, all protected valuation information is confidential and is not subject to subpoena or discovery or admissible in evidence in any private civil action. The superintendent may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the superintendent's official duties, including sharing the information on a confidential basis under section 216, subsection 5.*

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**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

Ref. #	Title	Description	Responding Agency/ Dept	Agency Proposed Action	Analyst Notes	Subcommittee Action
1	<a href="#">25 MRSA §1577, sub-§1</a>	Title 25, section 1577, subsection 1, relating to the state DNA data base and the state DNA data bank				
2	<a href="#">25 MRSA §2006, sub-§1</a>	Title 25, section 2006, subsection 1, relating to concealed handguns permit applications.				
3	<a href="#">25 MRSA §2006, sub-§2</a>	Title 25, section 2006, subsection 2, relating to concealed handguns permits Title 25, section 2006, subsection 1, relating to concealed handguns permit applications				
4	<a href="#">25 MRSA §2806, sub-§8</a>	Title 25, section 2806, subsection 8, relating to proceedings of the board of trustees of the Maine Criminal Justice Academy concerning complaints of misconduct of law enforcement officers  REPEALED				
5	<a href="#">25 MRSA §2806-A, sub-§10</a>	Title 25, section 2806-A, subsection 10, relating to complaints, charges or accusation of misconduct at				

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		the Maine Criminal Justice Academy.				
6	<a href="#">25 MRSA §2929, sub-§§1-4</a>	Title 25, section 2929, subsections 1, 2, 3 and 4, relating to emergency services communications				
7	<a href="#">25 MRSA §2929, sub-§2</a>	Title 25, section 2929, subsection 2, relating to public safety answering point records				
8	<a href="#">25 MRSA §2957</a>	Title 25, section 2957, relating to Maine Drug Enforcement Agency investigative records				
9	<a href="#">25 MRSA §4202, sub-§1</a>	Title 25, section 4202, subsection 1, relating to proceedings, communications and records of critical incident stress management team				
10	<a href="#">26 MRSA §3</a>	Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor				
11	<a href="#">26 MRSA §43</a>	Title 26, section 43, relating to the names of persons, firms and corporations providing information to the Department of Labor, Bureau of Labor Standards				
12	<a href="#">26 MRSA §665, sub-§1</a>	Title 26, section 665, subsection 1, relating to records submitted to the				

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

		Director of Labor Standards within the Department of Labor by an employer concerning wages				
13	<a href="#">26 MRSA §685, sub-§3</a>	Title 26, section 685, subsection 3, relating to substance abuse testing by an employer				
14	<a href="#">26 MRSA §850-D, sub-§4</a>	Title 26, section 850-D, subsection 4, relating to medical or health information submitted to administrator of paid family and medical leave program				
15	<a href="#">26 MRSA §934</a>	Title 26, section 934, relating to a report of the State Board of Arbitration and Conciliation in labor dispute	State Board of Arbitration and Conciliation, Maine Labor Relations Board	The agency does not recommend any changes	None	
16	<a href="#">26 MRSA §939</a>	Title 26, section 939, relating to information disclosed by a party to the State Board of Arbitration and Conciliation	State Board of Arbitration and Conciliation, Maine Labor Relations Board	The agency does not recommend any changes	None	
17	<a href="#">26 MRSA §965, sub-§2</a>	Title 26, section 965, subsection 2, relating to information disclosed by either party to a dispute to the Maine Labor Relations Board in context of mediation	Maine Labor Relations Board	The agency does not recommend any changes	Format: Language states that information is “privileged.” May wish to use “confidential.”	
18	<a href="#">26 MRSA §975, sub-§2</a>	Title 26, section 975, subsection 2, paragraph B, relating to information about municipal employees and	Maine Labor Relations Board	The agency takes no position with respect to this public records exception	None	



**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

		communications with bargaining agent				
19	<a href="#">26 MRSA §979-D, sub-§2</a>	Title 26, section 979-D, subsection 2, relating to information disclosed by either party to a dispute to the Maine Labor Relations Board in context of mediation	Maine Labor Relations Board	The agency does not recommend any changes	Format: Language states that information is “privileged.” May wish to use “confidential.”	
20	<a href="#">26 MRSA §979-T, sub-§2</a>	Title 26, section 979-T, subsection 2, paragraph B, relating to information about state employees and communications with bargaining agent	Maine Labor Relations Board	The agency takes no position with respect to this public records exception	None	
21	<a href="#">26 MRSA §1026, sub-§2</a>	Title 26, section 979-D, subsection 2, relating to information disclosed by either party to a dispute to a mediator in context of mediation	Maine Labor Relations Board	The agency does not recommend any changes	Format: Language states that information is “privileged.” May wish to use “confidential.”	
22	<a href="#">26 MRSA §1037, sub-§2</a>	Title 26, section 1037, subsection 2, paragraph B, relating to information about university, academy and community college employees and communications with bargaining agent	Maine Community College System	MCCS does not have any recommended changes to this exception	None	
23	<a href="#">26 MRSA §1047</a>	Title 26, section 1047, relating to information transmitted to the Bureau of Unemployment Compensation				

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

24	<a href="#">26 MRSA §1082, sub-§7</a>	Title 26, section 1082, subsection 7, relating to employers' unemployment compensation records concerning individual information				
25	<a href="#">26 MRSA §1085, sub-§4</a>	Title 26, section 1085, subsection 4, relating to fingerprint-based criminal history record check of applicants, employees and contractors with the Bureau of Labor Standards				
26	<a href="#">26 MRSA §1285, sub-§2</a>	Title 26, section 1285, subsection 2, relating to information disclosed by either party to a dispute in context of mediation	Maine Labor Relations Board	The agency does not recommend any changes	Format: Language states that information is "privileged." May wish to use "confidential."	
27	<a href="#">26 MRSA §1295, sub-§2</a>	Title 26, section 1295, subsection 2, paragraph B, relating to information about Judicial Branch employees and communications with bargaining agent				
28	<a href="#">27 MRSA §10, sub-§6</a>	Title 27, section 10, subsection 6, relating to personally identifiable information relating to parents and children participating in the Imagination Library of Maine Program				
29	<a href="#">27 MRSA §86-B, sub-§1</a>	Title 27, section 86-B, subsection 1, relating to museum draft research,				

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

		publications and exhibit materials, including scientific, archaeological and historic findings				
30	<a href="#">27 MRSA §86-B, sub-§2</a>	Title 27, section 86-B, subsection 2, relating to personal information contained in any record about the individual that is obtained by the Maine State Museum in the course of a historical research project				
31	<a href="#">27 MRSA §121</a>	Title 27, section 121, relating to library records concerning identity of patrons and use of books and materials	Maine Community College System	MCCS does not have any recommended changes to this exception	Format: Subsection 3 may not conform to drafting manual	
32	<a href="#">27 MRSA §377</a>	Title 27, section 377, relating to the location of a site for archeological research	Maine State Museum; Maine Historic Preservation Commission	The Maine State Museum does not recommend any changes	None	
33	<a href="#">28-A MRSA §755</a>	Title 28-A, section 755, relating to liquor licensees' business and financial records				
34	<a href="#">28-B MRSA §114</a>	Title 28-B, section 114, relating to personal contact information of applicants for adult use cannabis establishment license and employees of those establishments				
35	<a href="#">28-B MRSA §204, sub-§7</a>	Title 28-B, section 204, subsection 7, relating to criminal history record check				

**Public Records Exceptions for Review by RTKAC in 2024-2025**  
**Exceptions in Titles 25-32**

		information for cannabis license applicants				
36	<a href="#">28-B MRSA §511, sub-§4</a>	Title 28-B, section 511, subsection 4, relating to record keeping, inspection of records, and audits of cannabis establishment licensee documents				
37	<a href="#">29-A MRSA §152, sub-§3</a>	Title 29-A, section 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles				
38	<a href="#">29-A MRSA §251, sub-§4</a>	Title 29-A, section 251, subsection 4, relating to an email address submitted as part of the application process for a license or registration under Title 29-A				
39	<a href="#">29-A MRSA §253</a>	Title 29-A, section 253, relating to motor vehicle records concerning certain nongovernmental vehicles				
40	<a href="#">29-A MRSA §255, sub-§1</a>	Title 29-A, section 255, subsection 1, relating to motor vehicle records when a protection order is in effect				
41	<a href="#">29-A MRSA §257</a>	Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system  REPEALED				

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42	<a href="#">29-A MRSA §517, sub-§4</a>	Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles				
43	<a href="#">29-A MRSA §1258, sub-§7</a>	Title 29-A, section 1258, subsection 7, relating to the competency of a person to operate a motor vehicle				
44	<a href="#">29-A MRSA §1301, sub- §6-A</a>	Title 29-A, section 1301, subsection 6-A, relating to the social security number of an applicant for a driver license or nondriver identification card				
45	<a href="#">29-A MRSA §1401, sub-§6</a>	Title 29-A, section 1401, subsection 6, relating to driver's license digital images				
46	<a href="#">29-A MRSA §1410, sub-§5</a>	Title 29-A, section 1410, subsection 5, relating to nondriver identification card digital images				
47	<a href="#">29-A MRSA §2117, sub-§1</a>	Title 29-A, section 2117, subsection 1, relating to recorded images or audio produced by traffic surveillance cameras on a school bus				
48	<a href="#">29-A MRSA §2117-A, sub-§4</a>	Title 29-A, section 2117-A, subsection 4, relating to data collected or retained through the use of an automatic license plate recognition system				

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49	<a href="#"><u>29-A MRSA §2251, sub-§7-A</u></a>	Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in State Police accident report database				
50	<a href="#"><u>29-A MRSA §2601, sub-§3-A</u></a>	Title 29-A, section 2601, subsection 3-A, relating to personally identifiable information in the Department of Public Safety's electronic citation and warning database				
51	<a href="#"><u>30-A MRSA §503, sub-§1</u></a>	Title 30-A, section 503, subsection 1, relating to county personnel records				
52	<a href="#"><u>30-A MRSA §503, sub-§1-A</u></a>	Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force				
53	<a href="#"><u>30-A MRSA §2702, sub-§1</u></a>	Title 30-A, section 2702, subsection 1, relating to municipal personnel records				
54	<a href="#"><u>30-A MRSA §2702, sub-§1-A</u></a>	Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force				
55	<a href="#"><u>30-A MRSA §4353, sub-§4-A</u></a>	Title 30-A, section 4353, subsection 4-A, relating to records submitted to a municipal code enforcement officer relating to disability of an applicant for a variance				

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56	<a href="#">30-A MRSA §4353-A</a>	Title 30-A, section 4353-A, relating to records submitted to a municipal board of appeals relating to disability of an applicant for a variance				
57	<a href="#">30-A MRSA §4706, sub-§1</a>	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities				
58	<a href="#">30-A MRSA §4706, sub-§5</a>	Title 30-A, section 4706, subsection 1, relating to municipal personnel records				
59	<a href="#">30-A MRSA §5242, sub-§13</a>	Title 30-A, section 5242, subsection 13, relating to tax increment financing districts				
60	<a href="#">32 MRSA §85, sub-§3</a>	Title 32, section 85, subsection 3, relating to criminal history record information for an applicant seeking initial licensure by the Emergency Medical Services Board				
61	<a href="#">32 MRSA §91-B, sub-§1</a>	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee				
62	<a href="#">32 MRSA §91-B, sub-§1, ¶A</a>	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board				

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63	<a href="#">32 MRSA §91-B, sub-§1, ¶B</a>	Title 32, section 91-B, subsection 1, paragraph B, relating to confidential information as part of application for credentialing by Emergency Medical Services Board				
64	<a href="#">32 MRSA §91-B, sub-§1, ¶D</a>	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board				
65	<a href="#">32 MRSA §91-B, sub-§1, ¶¶E-F</a>	Title 32, section 91-B, subsection 1, paragraphs E and F, relating to health care information or records provided to the Emergency Medical Services Board				
66	<a href="#">32 MRSA §1092-A, sub-§§1-2</a>	Title 32, section 1092-A, subsections 1 and 2, relating to privileged communications of dentists and dental hygienists' patients  REPEALED				
67	<a href="#">32 MRSA §2105-A, sub-§3</a>	Title 32, section 2105-A, subsection 3, relating to information provided by a health care facility to the State Board of Nursing that identifies a patient				
68	<a href="#">32 MRSA §2109</a>	Title 32, section 2109, relating to personal contact				



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		and health information of nurse applicants and licensees				
69	<a href="#">32 MRSA §2109-A, sub-§2</a>	Title 32, section 2109-A relating to the board's ability to redact applicant or licensee records for potential risks to personal safety				
70	<a href="#">32 MRSA §2111, sub-§1, ¶F</a>	Title 32, section 2111 relating to background check results received by the State Board of Nursing				
71	<a href="#">32 MRSA §2571-A, sub-§1, ¶F</a>	Title 32, section 2571-A relating to background check results received by the Board of Osteopathic Licensure for licensing through the Interstate Medical Licensure Compact				
72	<a href="#">32 MRSA §2599</a>	Title 32, section 2599, relating to medical staff reviews and hospital reviews - osteopathic physicians				
73	<a href="#">32 MRSA §2600-A</a>	Title 32, section 2600-A, relating to personal contact and health information of osteopathic physician applicants and licensees				
74	<a href="#">32 MRSA §2600-E</a>	Title 32, section 2600-E, relating to the board's ability to redact applicant or licensee records for potential risks to personal safety				

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75	<a href="#">32 MRSA §3121, sub-§1, ¶F</a>	Title 32, section 3121, subsection 1, paragraph F, relating to fingerprint-based criminal history record check information for applicants for multistate licenses under Physical Therapy Licensure Compact	Dept of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Examiners in Physical Therapy	OPOR does not recommend changes	None	
76	<a href="#">32 MRSA §3275-A, sub-§1, ¶F</a>	Title 32, section 3275-A relating to background check results received by the Board Licensure in Medicine for licensing through the Interstate Medical Licensure Compact	Board of Licensure in Medicine	No changes recommended	None	
77	<a href="#">32 MRSA §3296</a>	Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees	Board of Licensure in Medicine	No changes recommended	None	
78	<a href="#">32 MRSA §3300-A</a>	Title 32, section 3300-A, relating to Board of Licensure in Medicine personal contact and health information about applicants and licensees	Board of Licensure in Medicine	BOLM recommends that personal email addresses be specifically identified in this exception	None	
79	<a href="#">32 MRSA §3300-H, sub-§2</a>	Title 32, section 3300-H, subsection 2, relating to the board's ability to redact applicant or licensee records for potential risks to personal safety	Board of Licensure in Medicine	BOLM recommends removal of this exception	Format: This is not framed as a public records exception, but the redaction does effectively result in a portion of an otherwise public record being withheld.	

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					Also note that subsection 1 does not conform to drafting manual – uses “not public” v. confidential.	
80	32 MRSA §6080	Title 32, section 6080, relating to information held by Bureau of Consumer Credit Protection about applicant or licensee related to investigation under Maine Money Transmission Modernization Act  NEW				
81	<a href="#">32 MRSA §6115, sub-§1</a>	Title 32, section 6115, subsection 1, relating to financial information provided to the Superintendent of the Bureau of Consumer Credit Protection, Department of Professional and Financial Regulation concerning money transmitters				
82	<a href="#">32 MRSA §6207-B</a>	Title 32, section 6207-B, relating to the nonbusiness address of a person licensed or certified under the Alcohol and Drug Counselors chapter of law.	Dept of Professional and Financial Regulation, Office of Professional and Occupational Regulation, State Board of Alcohol and Drug Counselors	In addition to removing the word “nonbusiness” from the exception, OPOR recommends that the exception contained in 32 M.R.S. § 6207-B to be amended to be identical to the one in 32 M.R.S. § 7032 (see response)	New Format: does not conform to drafting manual – uses “ is not a public record”	

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83	<a href="#">32 MRSA §7032</a>	Title 32, section 7032, relating to the address and telephone number of social worker licensee or applicant for licensure	Dept of Professional and Financial Regulation, Office of Professional and Occupational Regulation, State Board of Social Work Licensure	OPOR does not recommend changes at this time	None	
84	<a href="#">32 MRSA §7365, sub-§3</a>	Title 32, section 7365, subsection 3, relating to polygraph examination for pre-employment screening or law enforcement investigation				
85	<a href="#">32 MRSA §7365, sub-§4, ¶A</a>	Title 32, section 7365, subsection 4, paragraph A, relating to information concerning polygraph applicant or licensee and paragraph B, relating to information of a minor to whom a polygraph has been administered				
86	<a href="#">32 MRSA §7365, sub-§4, ¶B</a>	Title 32, section 7365, subsection 4, paragraph B, relating to information of a minor to whom a polygraph has been administered				
87	<a href="#">32 MRSA §8124</a>	Title 32, section 8124, relating to the home address and home telephone number of a professional investigator or investigative assistant				

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88	<a href="#">32 MRSA §9418</a>	Title 32, section 9418, relating to private security guards				
89	<a href="#">32 MRSA §11305, sub-§3</a>	Title 32, section 11305, subsection 3, relating to administration of the Maine Commodity Code by the Securities Administrator	Dept of Professional and Financial Regulation, Office of Securities	The Office does not recommend any changes to this exception	Format: Nonconforming - stating records are public and then providing exceptions	
90	<a href="#">32 MRSA §13006</a>	Title 32, section 13006, relating to real estate grievance and professional standards committee hearings	Dept of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Maine Real Estate Commission	No changes recommended	None	
91	<a href="#">32 MRSA §13725, sub-§8</a>	Title 32, section 13725, subsection 8, relating to records identifying an individual seeking access to Insulin Safety Net program held by the Pharmacy Board	Dept of Professional and Financial Regulation, , Office of Professional and Occupational Regulation, Maine Board of Pharmacy	No changes; At the time of this response, the Insulin Safety Net Program has not yet been implemented by the Board of Pharmacy within the Office of Professional and Occupational Regulation.	None	
92	<a href="#">32 MRSA §14021, sub-§7</a>	Title 32, section 14021, subsection 7, relating to criminal history records provide to the Board of Real Estate Appraisers to determine eligibility of applicant for licensure	Dept of Professional and Financial Regulation, , Office of Professional and Occupational Regulation, Maine	OPOR does not recommend any changes. Of note is that any changes to the law would require approval from the U.S. Department of Justice, Criminal Justice	None	

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			Board of Real Estate Appraisers	Information Law Unit.		
93	<a href="#">32 MRSA §16524</a>	Title 32, section 16524, relating to personal information of an applicant for Securities Restitution Assistance Fund	Dept of Professional and Financial Regulation, Office of Securities	The Office does not recommend any changes to this exception	Format: Nonconforming - Instead of using "confidential," uses "not public records." Related to Ref #94	
94	<a href="#">32 MRSA §16607, sub-§2</a>	Title 32, section 16607, subsection 2, relating to records obtained or filed under the Maine Securities Act	Dept of Professional and Financial Regulation, Office of Securities	The Office does not recommend any changes to this exception	Format: Nonconforming - Instead of using "confidential," uses "not public records." Related to Ref #93	
95	<a href="#">32 MRSA §16808</a>	Title 32, section 16808 relating to records provided by a broker-dealer or investment adviser to the Department of Health and Human Services and law enforcement agencies regarding financial exploitation of an eligible adult.				
96	<a href="#">32 MRSA §18509, sub-§6</a>	Title 32, section 18509, subsection 6 relating to information distributed by a board that licenses, regulates or educates physicians in the state.	Board of Licensure in Medicine	BOLM does not recommend any changes.	Format: Does not conform to drafting standards: "confidential within the meaning of Title 1, section 402, subsection 3, paragraph A"	