

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

**Wednesday, October 15, 10 am**

Location: State House, Room 228 (Hybrid Meeting)  
Public access also available through the Maine Legislature's livestream:  
<https://legislature.maine.gov/Audio/#228>

1. Introductions
2. Discussion of exceptions to be reviewed this interim
3. Discussion of LD 1824
4. Confirm future meeting dates
5. Adjourn

## 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.

## 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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Maine State Legislature  
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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.

**PUBLIC RECORDS EXCEPTIONS REVIEWED IN 2024: TITLES 25, 26, 27, 28-A, 29-A, 30-A AND 32 RECOMMENDED TO BE CONTINUED WITHOUT CHANGE**

The following public records exceptions were reviewed in Titles 25, 26, 27, 28-A, 29-A, 30-A and 32 should remain in law as written:

- Title 25, section 2929, subsections 1, 2, 3 and 4, relating to emergency services communications
- Title 25, section 2929, subsection 2, relating to public safety answering point records
- Title 25, section 2957, relating to Maine Drug Enforcement Agency investigative records
- Title 25, section 4202, subsection 1, relating to proceedings, communications and records of critical incident stress management team
- Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor
- Title 26, section 43, relating to the names of persons, firms and corporations providing information to the Department of Labor, Bureau of Labor Standards
- Title 26, section 665, subsection 1, relating to records submitted to the Director of Labor Standards within the Department of Labor by an employer concerning wages
- Title 26, section 850-D, subsection 4, relating to medical or health information submitted to administrator of paid family and medical leave program
- Title 26, section 934, relating to a report of the State Board of Arbitration and Conciliation in labor dispute
- Title 26, section 939, relating to information disclosed by a party to the State Board of Arbitration and Conciliation
- 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
- Title 26, section 975, subsection 2, paragraph B, relating to information about municipal employees and communications with bargaining agent
- 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.
- Title 26, section 979-T, subsection 2, paragraph B, relating to information about state employees and communications with bargaining agent
- Title 26, section 1026, subsection 2, relating to information disclosed by either party to a dispute to a mediator in context of mediation
- Title 26, section 1037, subsection 2, paragraph B, relating to information about university, academy and community college employees and communications with bargaining agent
- Title 26, section 1047, relating to information transmitted to the Bureau of Unemployment Compensation
- Title 26, section 1082, subsection 7, relating to employers' unemployment compensation records concerning individual information
- Title 26, section 1285, subsection 2, relating to information disclosed by either party to a dispute in context of mediation



- Title 26, section 1295, subsection 2, paragraph B, relating to information about Judicial Branch employees and communications with bargaining agent
- Title 27, section 121, relating to library records concerning identity of patrons and use of books and materials
- Title 27, section 377, relating to the location of a site for archeological research
- Title 28-A, section 755, relating to liquor licensees' business and financial records
- Title 29-A, section 2117-A, subsection 4, relating to data collected or retained through the use of an automatic license plate recognition system
- Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force
- 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
- 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
- Title 30-A, section 4706, subsection 1, relating to municipal housing authorities
- Title 30-A, section 4706, subsection 5, relating to municipal personnel records
- Title 30-A, section 5242, subsection 13, relating to tax increment financing districts
- Title 32, section 2109, relating to personal contact and health information of nurse applicants and licensees
- Title 32, section 2109-A relating to the board's ability to redact applicant or licensee records for potential risks to personal safety
- 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
- 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
- Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees
- 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
- Title 32, section 7032, relating to the address and telephone number of social worker licensee or applicant for licensure
- Title 32, section 7365, subsection 3, relating to polygraph examination for pre-employment screening or law enforcement investigation
- 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
- Title 32, section 7365, subsection 4, paragraph B, relating to information of a minor to whom a polygraph has been administered
- Title 32, section 8124, relating to the home address and home telephone number of a professional investigator or investigative assistant

- Title 32, section 13006, relating to real estate grievance and professional standards committee hearings
- Title 32, section 13725, subsection 8, relating to records identifying an individual seeking access to Insulin Safety Net program held by the Pharmacy Board
- 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

## Exceptions Reviews Tabled until next Interim

- Title 25, section 1577, subsection 1, relating to the state DNA data base and the state DNA data bank
- Title 25, section 2806-A, subsection 10, relating to complaints, charges or accusation of misconduct at the Maine Criminal Justice Academy
- Title 26, section 685, subsection 3, relating to substance abuse testing by an employer
- Title 27, section 10, subsection 6, relating to personally identifiable information relating to parents and children participating in the Imagination Library of Maine Program
- Title 28-B, section 114, relating to personal contact information of applicants for adult use cannabis establishment license and employees of those establishments
- Title 28-B, section 204, subsection 7, relating to criminal history record check information for cannabis license applicants
- Title 28-B, section 511, subsection 4, relating to record keeping, inspection of records, and audits of cannabis establishment licensee documents
- Title 29-A, section 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles
- 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
- Title 29-A, section 253, relating to motor vehicle records concerning certain nongovernmental vehicles
- Title 29-A, section 255, subsection 1, relating to motor vehicle records when a protection order is in effect
- Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system
- Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles
- Title 29-A, section 1258, subsection 7, relating to the competency of a person to operate a motor vehicle
- 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
- Title 29-A, section 1401, subsection 6, relating to driver's license digital images
- Title 29-A, section 1410, subsection 5, relating to nondriver identification card digital images
- Title 29-A, section 2117, subsection 1, relating to recorded images or audio produced by traffic surveillance cameras on a school bus
- Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in State Police accident report database
- 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
- Title 30-A, section 503, subsection 1, relating to county personnel records
- Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force
- Title 32, section 85, subsection 3, relating to criminal history record information for an applicant seeking initial licensure by the Emergency Medical Services Board

- Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee
- 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
- Title 32, section 91-B, subsection 1, paragraph B, relating to confidential information as part of application for credentialing by Emergency Medical Services Board
- Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board
- 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
- Title 32, section 1092-A, subsections 1 and 2, relating to privileged communications of dentists and dental hygienists' patients
- Title 32, section 2111 relating to background check results received by the State Board of Nursing
- 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
- Title 32, section 2599, relating to medical staff reviews and hospital reviews - osteopathic physicians
- Title 32, section 2600-A, relating to personal contact and health information of osteopathic physician applicants and licensees
- Title 32, section 2600-E, relating to the board's ability to redact applicant or licensee records for potential risks to personal safety
- 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
- 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
- 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.

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

<b>Ref. # (previous ref. #)</b>	<b>Title</b>	<b>Description</b>	<b>Responding Agency/ Dept</b>	<b>Agency Proposed Action</b>	<b>Analyst Notes</b>	<b>Subcommittee Action</b>
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	State Police, Dept of Public Safety	Maine State Police supports the continuation of this exception as written.	correct format for the confidential designation at sub-§1; however, the exceptions language at sub-§2 states that “the following persons or agencies may have access to DNA records.” The drafting manual favors language allowing “disclosure” to certain entities.	10.31.24 – TABLED to review next interim
2 (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 the Maine Criminal Justice Academy.	Maine Criminal Justice Academy, Department of Public Safety	Maine Criminal Justice Academy supports the continuation of this exception as written.	No changes recommended	10.31.24 – TABLED to review next interim
3 (13)	<a href="#">26 MRSA §685, sub-§3</a>	Title 26, section 685, subsection 3, relating to substance abuse testing by an employer	Employers, generally	N/A	exceptions language uses “release” instead of “disclosure”	10.31.24 – TABLED to review next interim
4 (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	Maine State Library	Emailed 10.8	No changes recommended	10.31.24 – TABLED to review next interim

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

5 (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	Department of Administrative and Financial Services; Office of Cannabis Policy	DAFS/OCP does not recommend any changes.	No changes recommended	10.31.24 – TABLED to review next interim
6 (35)	<a href="#">28-B MRSA §204, sub-§7</a>	Title 28-B, section 204, subsection 7, relating to criminal history record check information for cannabis license applicants	Department of Administrative and Financial Services; Office of Cannabis Policy	DAFS/OCP does not recommend any changes.	No changes recommended	10.31.24 – TABLED to review next interim
7 (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	Department of Administrative and Financial Services; Office of Cannabis Policy	OCP recommends that the committee define the term “business record” to clarify what records are covered by the exception in § 511.  See proposed definition in response materials.	Does not conform to drafting manual; “may not disseminate” and “are not public records” in ¶B	10.31.24 – TABLED to review next interim
8 (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	Department of the Secretary of State, Bureau of Motor Vehicles	Emailed 10.7	No changes recommended	10.31.24 – TABLED to review next interim
9 (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	Department of the Secretary of State, Bureau of Motor Vehicles	Emailed 10.7	Subsection 4 may not conform to drafting manual	10.31.24 – TABLED to review next interim

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

10 (39)	<a href="#">29-A MRSA §253</a>	Title 29-A, section 253, relating to motor vehicle records concerning certain nongovernmental vehicles	Department of the Secretary of State, Bureau of Motor Vehicles	Emailed 10.7	May not conform to drafting manual	10.31.24 – TABLED to review next interim
11 (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	Department of the Secretary of State, Bureau of Motor Vehicles	Emailed 10.7	No changes recommended	10.31.24 – TABLED to review next interim
12 (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	Department of the Secretary of State, Bureau of Motor Vehicles	Emailed 10.7	REPEALED	10.31.24 – TABLED to review next interim
13 (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	Department of the Secretary of State, Bureau of Motor Vehicles	Emailed 10.7	No changes recommended	10.31.24 – TABLED to review next interim
14 (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	Department of the Secretary of State, Bureau of Motor Vehicles	Emailed 10.7	No changes recommended	10.31.24 – TABLED to review next interim
15 (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	Department of the Secretary of State, Bureau of Motor Vehicles	Emailed 10.7	Does not conform to drafting manual; SOS “may not disseminate” records	10.31.24 – TABLED to review next interim

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

16 (45)	<a href="#">29-A MRSA §1401, sub-§6</a>	Title 29-A, section 1401, subsection 6, relating to driver's license digital images	Department of the Secretary of State, Bureau of Motor Vehicles	Emailed 10.7	No changes recommended	10.31.24 – TABLED to review next interim
17 (46)	<a href="#">29-A MRSA §1410, sub-§5</a>	Title 29-A, section 1410, subsection 5, relating to nondriver identification card digital images	Department of the Secretary of State, Bureau of Motor Vehicles	Emailed 10.7	No changes recommended	10.31.24 – TABLED to review next interim
18 (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	Department of the Secretary of State, Bureau of Motor Vehicles	Emailed 10.7	No changes recommended	10.31.24 – TABLED to review next interim
19 (49)	<a href="#">29-A MRSA §2251, sub- §7-A</a>	Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in State Police accident report database	Department of Public Safety	Department of Public Safety supports the continuation of this exception as written	Does not conform to drafting manual; “may not disseminate” and “are not public records” in ¶B	10.31.24 – TABLED to review next interim
20 (50)	<a href="#">29-A MRSA §2601, sub- §3-A</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	State Police, Dept of Public Safety	Maine State Police supports the continuation of this exception as written	No changes recommended	10.31.24 – TABLED to review next interim
21 (51)	<a href="#">30-A MRSA §503, sub-§1</a>	Title 30-A, section 503, subsection 1, relating to county personnel records	Maine County Commissioners Association	Emailed 10.8	Does not conform to drafting manual: “not public records.”	10.31.24 – TABLED to review next interim

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

22 (52)	<a href="#">30-A MRSA §503, sub-§1-A</a>	Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force	Maine County Commissioners Association	Emailed 10.8	No changes recommended	10.31.24 – TABLED to review next interim
23 (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	Department of Public Safety	Maine EMS supports the continuation of this exception as written.	No changes recommended	10.31.24 – TABLED to review next interim
24 (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	Department of Public Safety	Maine EMS supports the continuation of this exception as written.	No changes recommended	10.31.24 – TABLED to review next interim
25 (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	Department of Public Safety	Maine EMS supports the continuation of this exception as written.	No changes recommended	10.31.24 – TABLED to review next interim
26 (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	Department of Public Safety	Maine EMS supports the continuation of this exception as written.	No changes recommended	10.31.24 – TABLED to review next interim
27 (64)	<a href="#">32 MRSA §91-B, sub-§1, ¶D</a>	Title 32, section 91-B, subsection 1, paragraph D, relating to examination	Department of Public Safety		No changes recommended	10.31.24 – TABLED to review next interim

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

		questions used for credentialing by Emergency Medical Services Board		Maine EMS supports the continuation of this exception as written.		
28 (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	Department of Public Safety	Maine EMS supports the continuation of this exception as written.	No changes recommended	10.31.24 – TABLED to review next interim
29 (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	Dental Board	N/A	REPEALED	10.31.24 – TABLED to review next interim
30 (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	Maine Board of Nursing	The Board does not recommend any changes	No changes recommended	10.31.24 – TABLED to review next interim
31 (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	Board of Osteopathic Licensure	Emailed 10.8	No changes recommended	10.31.24 – TABLED to review next interim
32 (72)	<a href="#">32 MRSA §2599</a>	Title 32, section 2599, relating to medical staff reviews and hospital reviews - osteopathic physicians	Board of Osteopathic Licensure	Emailed 10.8	No changes recommended	10.31.24 – TABLED to review next interim
33 (73)	<a href="#">32 MRSA §2600-A</a>	Title 32, section 2600-A, relating to personal contact and health information of	Board of Osteopathic Licensure	Emailed 10.8	No changes recommended	10.31.24 – TABLED to review next interim

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

		osteopathic physician applicants and licensees				
34 (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	Board of Osteopathic Licensure	Emailed 10.8	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. Also note that subsection 1 does not conform to drafting manual – uses “not public” v. confidential.	10.31.24 – TABLED to review next interim
35 (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	Bureau of Consumer Credit Protection	Emailed 10.8	Does not conform to drafting manual: “are confidential and are not subject to disclosure under Title 1, chapter 13.”	10.31.24 – TABLED to review next interim
36 (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	Bureau of Consumer Credit Protection	N/A  REPEALED		10.31.24 – TABLED to review next interim

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

		Regulation concerning money transmitters  REPEALED				
37 (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.	Department of Health and Human Services	DHHS does not recommend any changes	Does not conform to drafting manual: "All records made available to agencies under this section are not public records for purposes of Title 1, chapter 13, subchapter 1."	10.31.24 – TABLED to review next interim

**Ref. #**  
**(previous ref. #)**

1



**§1577. DNA records**

\* **1. Confidentiality.** All DNA records are confidential and may not be disclosed to any person or agency unless disclosure is authorized by this section.  
[PL 1995, c. 457, §1 (NEW).]

**2. Access to records.** The following persons or agencies may have access to DNA records:

A. Local, county, state and federal criminal justice and law enforcement agencies, including forensic laboratories serving the agencies, for identification purposes that further official criminal investigations; [PL 1995, c. 457, §1 (NEW).]

B. The FBI for storage and maintenance of CODIS; [PL 1995, c. 457, §1 (NEW).]

C. Medical examiners and coroners for the purpose of identifying remains; and [PL 1995, c. 457, §1 (NEW).]

D. A person who has been identified and charged with a criminal offense or a juvenile crime as a result of a search of DNA records stored in the state DNA data base. A person who has been identified and charged with a criminal offense or a juvenile crime has access only to that person's records and any other records that person is entitled to under the Maine Rules of Evidence. [PL 2003, c. 393, §6 (AMD).]

[PL 2003, c. 393, §6 (AMD).]

**3. Statistical interpretation.** Notwithstanding subsections 1 and 2, DNA records may be released to advance DNA analysis methods and support statistical interpretation of DNA analysis, including development of population data bases, if personal identifying information is removed from DNA records prior to the release of those records.

[PL 1995, c. 457, §1 (NEW).]

**4. Expungement.** A person whose DNA record has been stored in the state DNA data base may petition the Superior Court for expungement on the ground that the conviction or adjudication justifying the inclusion of the DNA record in the state DNA data base has been reversed or dismissed. Upon receipt of an expungement order and a certified copy of the order reversing and dismissing the conviction or adjudication, the Chief of the State Police shall purge from the state DNA data base the DNA record and all identifiable information resulting exclusively from the reversed conviction or adjudication.

[PL 2003, c. 393, §7 (AMD).]

**SECTION HISTORY**

PL 1995, c. 457, §1 (NEW). PL 2003, c. 393, §§6,7 (AMD).

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**STATUTE:** 25 MRSA §1577, sub-§1

**AGENCY:** State Police, Department of Public Safety

**CONTACT PERSON:** Paul Cavanaugh

**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).

*The Maine State Police Crime laboratory is the only agency that creates DNA records pursuant to this subsection of the DNA Data Base Act. The use of DNA in criminal investigations and for use in identifying remains is crucial. Outside the context of criminal discovery, which is an exception to this exception, we have had one request in the last four years for DNA records. The only request was an attack by private counsel which led to litigation and confirmation of the confidentiality of these records. Please see, *Fairfield v. Maine State Police*, 2023 ME 12.*

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

*We fully support maintaining this exception for the reasons expressed and confirmed by the Law Court.*

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?

*In light of the recent Law Court decision, we believe the statute is clear and no changes are necessary.*

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

**Ref. #**  
**(previous ref. #)**

2  
(5)



**§2806-A. Disciplinary sanctions**

**1. Disciplinary proceedings and sanctions.** The board or, as delegated, the complaint review committee, established pursuant to section 2805-C, or staff, shall investigate a complaint on its own motion or upon receipt of a written complaint filed with the board regarding noncompliance with or violation of this chapter or of any rules adopted by the board. Investigation may include an informal conference before the complaint review committee to determine whether grounds exist for suspension, revocation or denial of a certificate or for taking other disciplinary action pursuant to this chapter. The board, the complaint review committee or staff may subpoena witnesses, records and documents in any investigation or hearing conducted.

[PL 2013, c. 147, §39 (NEW).]

**2. Notice.** The board or, as delegated, the complaint review committee, established pursuant to section 2805-C, or staff, shall notify the certificate holder of the content of a complaint filed against the certificate holder as soon as possible, but in no event later than 60 days after the board or staff receives the initial pertinent information. The certificate holder has the right to respond within 30 days in all cases except those involving an emergency denial, suspension or revocation, as described in Title 5, chapter 375, subchapter 5. If the certificate holder's response to the complaint satisfies the board, the complaint review committee or staff that the complaint does not merit further investigation or action, the matter may be dismissed, with notice of the dismissal to the complainant, if any.

[PL 2013, c. 147, §39 (NEW).]

**3. Informal conference.** If, in the opinion of the board, the complaint review committee, established pursuant to section 2805-C, or staff, the factual basis of the complaint is or may be true and the complaint is of sufficient gravity to warrant further action, the board or staff may request an informal conference with the certificate holder. The complaint review committee or staff shall provide the certificate holder with adequate notice of the conference and of the issues to be discussed. The certificate holder may, without prejudice, refuse to participate in an informal conference if the certificate holder prefers to request an adjudicatory hearing.

[PL 2013, c. 147, §39 (NEW).]

**4. Further action.** If the board or the complaint review committee, established pursuant to section 2805-C, finds that the factual basis of the complaint is true and is of sufficient gravity to warrant further action, it may take any of the following actions.

A. The board, the complaint review committee or staff may negotiate a consent agreement that resolves a complaint or investigation without further proceedings. Consent agreements may be entered into only with the consent of the certificate holder and the board. Any remedy, penalty or fine that is otherwise available by law, even if only in the jurisdiction of the Superior Court, may be achieved by consent agreement, including long-term suspension and permanent revocation of a certificate issued under this chapter. A consent agreement is not subject to review or appeal and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court. [PL 2013, c. 147, §39 (NEW).]

B. If a certificate holder offers to voluntarily surrender a certificate, the board, the complaint review committee or staff may negotiate stipulations necessary to ensure protection of the public health and safety and the rehabilitation or education of the certificate holder. These stipulations may be set forth only in a consent agreement entered into between the board and the certificate holder. [PL 2013, c. 147, §39 (NEW).]

C. Unless specifically otherwise indicated in this chapter, if the board concludes that modification, suspension, revocation or imposition of any other sanction authorized under this chapter is in order, the board shall so notify the certificate holder and inform the certificate holder of the right to request an adjudicatory hearing. If the certificate holder requests an adjudicatory hearing in a timely manner, the adjudicatory hearing must be held by the board, a subcommittee of 3 board members

designated by the board chair or a hearing officer appointed by the board. The hearing must be in accordance with Title 5, chapter 375, subchapter 4. If a hearing officer conducts the hearing, the hearing officer, after conducting the hearing, shall file with the board all papers connected with the case and report recommended findings and sanctions to the board, which may approve or modify them. If the certificate holder wishes to appeal the final decision of the board, the certificate holder shall file a petition for review with the Superior Court within 30 days of receipt of the board's decision. Review under this paragraph must be conducted pursuant to Title 5, chapter 375, subchapter 7. [PL 2013, c. 147, §39 (NEW).]

[PL 2013, c. 147, §39 (NEW).]

**5. Grounds for action.** The board may take action against any applicant for a certificate or certificate holder pursuant to this chapter or any rules adopted pursuant to this chapter, including, but not limited to, a decision to impose a civil penalty or to refuse to issue a certificate or to modify, suspend or revoke a certificate for any of the following reasons:

A. Failure to meet annual certification or recertification requirements. In enforcing this paragraph, the board shall, no later than March 31st of every year, review the certification of all law enforcement and corrections officers and decertify those individuals who do not meet certification or recertification requirements; [PL 2013, c. 147, §39 (NEW).]

B. Absent extenuating circumstances as determined by the board, working more than 1,040 hours in any one calendar year as a part-time law enforcement officer performing law enforcement duties and while possessing a part-time law enforcement certificate issued by the board pursuant to section 2803-A; [PL 2013, c. 147, §39 (NEW).]

C. Conviction of murder or any crime or attempted crime classified in state law as a Class A, Class B, Class C or Class D crime or a violation of any provision of Title 17-A, chapter 15, 19, 25, 29, 31, 35, 41 or 45. Notwithstanding any other provision of law, the board may summarily and without hearing suspend or revoke any certificate as a result of any criminal conviction identified by this paragraph pursuant to Title 5, section 10004, subsection 1; [PL 2013, c. 147, §39 (NEW).]

D. Juvenile adjudication of murder or any crime or attempted crime classified in state law as a Class A, Class B, Class C or Class D crime; [PL 2013, c. 147, §39 (NEW).]

E. Guilty plea pursuant to a deferred disposition of murder or any crime or attempted crime classified in state law as a Class A, Class B, Class C or Class D crime or a violation of any provision of Title 17-A, chapter 15, 19, 25, 29, 31, 35, 41 or 45; [PL 2013, c. 147, §39 (NEW).]

F. Engaging in conduct that is prohibited or penalized by state law as murder or a Class A, Class B, Class C or Class D crime or by any provision of Title 17-A, chapter 15, 19, 25, 29, 31, 35, 41 or 45; [PL 2013, c. 147, §39 (NEW).]

G. Conviction of or adjudication as a juvenile of a crime specified in paragraph D in another state or other jurisdiction, unless that crime is not punishable as a crime under the laws of that state or other jurisdiction in which it occurred. Notwithstanding any other provision of law, the board may summarily and without hearing suspend or revoke any certificate as a result of any criminal conviction identified by this paragraph pursuant to Title 5, section 10004, subsection 1; [PL 2013, c. 147, §39 (NEW).]

H. Engaging in conduct specified in paragraphs C and D in another state or other jurisdiction unless that conduct is not punishable as a crime under the laws of that state or other jurisdiction in which it occurred; [PL 2013, c. 147, §39 (NEW).]

I. Falsifying or misrepresenting material facts in obtaining or maintaining a certificate issued by the board pursuant to section 2803-A; [PL 2013, c. 147, §39 (NEW).]

J. Engaging in conduct that violates the standards established by the board and that when viewed in light of the nature and purpose of the person's conduct and circumstances known to the person, involves a gross deviation from the standard of conduct that a reasonable and prudent certificate holder would observe in the same or similar situation; [PL 2019, c. 438, §5 (AMD).]

K. Engaging in a sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C, or in sexual contact, as defined in Title 17-A, section 251, subsection 1, paragraph D, with another person, not the person's spouse, if at the time of the sexual act or sexual contact:

- (1) The officer was engaged in an investigation or purported investigation involving an allegation of abuse, as defined in former Title 19, section 762, subsection 1, in Title 19-A, former section 4002, subsection 1 and in Title 19-A, section 4102, subsection 1;
- (2) The other person was the alleged victim of that abuse;
- (3) The parties did not have a preexisting and ongoing sexual relationship that included engaging in any sexual act or sexual contact; and
- (4) Less than 60 days had elapsed since the officer initially became involved in the investigation or purported investigation; [PL 2021, c. 255, §2 (AMD); PL 2021, c. 647, Pt. B, §58 (AMD); PL 2021, c. 647, Pt. B, §65 (AFF).]

L. Engaging in sexual contact, as defined in Title 17-A, section 251, subsection 1, paragraph D, with another person, not the person's spouse, if at the time of the sexual contact the applicant or certificate holder is acting in performance of official duties and the other person is under arrest, in custody or being interrogated or temporarily detained, including during a traffic stop or questioning pursuant to an investigation of a crime, except that it is not grounds for discipline that a certificate holder properly performs a search of a person for legitimate law enforcement purposes consistent with training standards approved by the board; and [PL 2021, c. 255, §3 (AMD).]

M. Engaging in conduct that is a violation of the standards of conduct established by the board by rule pursuant to section 2803-A, subsection 15-A. [PL 2021, c. 255, §4 (NEW).]  
[PL 2021, c. 255, §§2-4 (AMD); PL 2021, c. 647, Pt. B, §58 (AMD); PL 2021, c. 647, Pt. B, §65 (AFF).]

**6. Discipline.** The board may impose the following forms of discipline upon a certificate holder or applicant for a certificate:

A. Denial of an application for a certificate, which may occur in conjunction with the imposition of other discipline; [PL 2013, c. 147, §39 (NEW).]

B. Issuance of warning, censure or reprimand. Each warning, censure or reprimand issued must be based upon violation of a single applicable law, rule or condition of certification or must be based upon a single instance of actionable conduct or activity; [PL 2013, c. 147, §39 (NEW).]

C. Suspension of a certificate for up to 3 years. Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation, although the suspension remains part of the certificate holder's record; [PL 2013, c. 147, §39 (NEW).]

D. Revocation of a certificate; [PL 2013, c. 147, §39 (NEW).]

E. Imposition of civil penalties of up to \$1,500 for each violation of applicable laws, rules or conditions of certification or for each instance of actionable conduct or activity; or [PL 2013, c. 147, §39 (NEW).]

F. Imposition of conditions of probation. Probation may run for such time period as the board determines appropriate. Probation may include conditions such as: additional continuing education; medical, psychiatric or mental health consultations or evaluations; mandatory professional supervision of the applicant or certificate holder; restrictions; and other conditions as the board

determines appropriate. Costs incurred in the performance of terms of probation are borne by the applicant or certificate holder. Failure to comply with the conditions of probation is a ground for disciplinary action against a certificate holder. [PL 2013, c. 147, §39 (NEW).]

[PL 2013, c. 147, §39 (NEW).]

**7. Letter of guidance.** The board may issue a letter of guidance or concern to a certificate holder. A letter of guidance or concern may be used to educate, reinforce knowledge regarding legal or professional obligations or express concern over action or inaction by the certificate holder that does not rise to the level of misconduct sufficient to merit disciplinary action. The issuance of a letter of guidance or concern is not a formal proceeding and does not constitute an adverse disciplinary action of any form. Notwithstanding any other provision of law, letters of guidance or concern are not confidential. The board may place letters of guidance or concern, together with any underlying complaint, report and investigation materials, in a certificate holder's file for a specified period of time, not to exceed 10 years. Any letters, complaints and materials placed on file may be accessed and considered by the board in any subsequent action commenced against the certificate holder within the specified time frame. Complaints, reports and investigation materials placed on file remain confidential to the extent required by this chapter.

[PL 2013, c. 147, §39 (NEW).]

**8. Injunction.** The State may bring an action in Superior Court to enjoin a person from violating any provision of this chapter, regardless of whether civil or administrative proceedings have been or may be instituted.

[PL 2013, c. 147, §39 (NEW).]

**9. Recertification.** A person whose certificate has been revoked under this chapter may apply to the board for reinstatement of certification if:

A. The certificate was revoked for a cause other than engaging in conduct that is prohibited or penalized by state law as murder or as a Class A, Class B or Class C crime or for equivalent conduct in another state or other jurisdiction; [PL 2013, c. 147, §39 (NEW).]

B. At least 3 years have elapsed since revocation of the certificate; and [PL 2013, c. 147, §39 (NEW).]

C. A law enforcement or corrections agency has indicated a commitment to hire the individual if the individual is recertified. [PL 2013, c. 147, §39 (NEW).]

The granting of recertification under this subsection is governed by Maine Criminal Justice Academy rules relating to certification. The individual is subject to all training requirements applicable to persons whose certification has lapsed.

[PL 2013, c. 147, §39 (NEW).]

**10. Confidentiality; access to documents; public records.** All complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in suspension or revocation of a certificate that are considered by the board or the complaint review committee established pursuant to section 2805-C are confidential. If a person subject to this chapter requests an adjudicatory hearing under the Maine Administrative Procedure Act, that hearing must be open to the public. The hearing officer who presides over the hearing shall issue a written decision that states the conduct or other facts on the basis of which action is being taken and the reason for that action. Once issued, the hearing officer's written decision is a public record under the Freedom of Access Act, regardless of whether it is appealed. Any action taken by the board pursuant to this section as a result of a complaint, charge or accusation must be supported by a statement of findings and must be issued as a written decision of the board. The written decision of the board and findings are public records under the Freedom of Access Act.

[PL 2021, c. 255, §5 (AMD).]

## SECTION HISTORY

PL 2013, c. 147, §39 (NEW). PL 2019, c. 438, §§5, 6 (AMD). PL 2021, c. 255, §§2-5 (AMD).  
PL 2021, c. 647, Pt. B, §58 (AMD). PL 2021, c. 647, Pt. B, §65 (AFF).

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**STATUTE:** 25 MRSA §2806-A, sub-§10

**AGENCY:** Maine Criminal Justice Academy, Department of Public Safety

**CONTACT PERSON:** Paul Cavanaugh

**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).

*Answer: The Maine Criminal Justice Academy (MCJA) responds to approximately 1000 Freedom of Access Act requests annually. Less than two percent (20 cases) implicate the confidentiality provisions of 25 MRSA §2806-A, sub-§10 and in approximately one percent (10 cases) we cite the statute to deny a request.*

**Title 25 MRSA 2806-A (10) Confidentiality; access to documents; public records.** All complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in suspension or revocation of a certificate that are considered by the board or the complaint review committee established pursuant to section 2805-C are confidential. If a person subject to this chapter requests an adjudicatory hearing under the Maine Administrative Procedure Act, that hearing must be open to the public. The hearing officer who presides over the hearing shall issue a written decision that states the conduct or other facts on the basis of which action is being taken and the reason for that action. Once issued, the hearing officer's written decision is a public record under the Freedom of Access Act, regardless of whether it is appealed. Any action taken by the board pursuant to this section as a result of a complaint, charge or accusation must be supported by a statement of findings and must be issued as a written decision of the board. The written decision of the board and findings are public records under the Freedom of Access Act.

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

**Answer:** *We support the continuation of this exception to allegations and investigative materials because it creates the appropriate balance between protecting the integrity of investigations and the rights of the public to have information about officers who engage in misconduct. Investigations necessarily involve compiling confidential information that may not be material to the ultimate resolution of the case, many of which do not lead to discipline against the subject officer. Maintaining confidentiality in these instances is appropriate to protect victims, witnesses, and innocent officers. Yet, because any final Board action is not confidential, case resolutions become available to the public, thereby satisfying the public's need to know about discipline opposed against the State's law enforcement and corrections officers.*

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?

**Answer:** *We have not experienced any problems with the application of this exception and believe the exception is for the most part clearly identified in the statute. One potential gray area involves whether these confidential materials would remain confidential if they were used as exhibits at an adjudicatory hearing that under this provision "must be open to the public." In consultation with our legal counsel, we have concluded that when used as exhibits at an adjudicatory hearing, these materials become public unless made confidential by other statutes (e.g., medical records). If this legal interpretation is inconsistent with legislative intent, the Legislature may want to consider amending the provision accordingly.*

4. Does your agency recommend changes to this exception?

**Answer:** *No recommended changes.*

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

**Answer** *MCJA discipline records are specific to our role as licensing agency. Individual Law Enforcement Agencies retain their own personnel files that may include discipline covered by other statutes.*

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

**Answer:** *None*

**Ref. #**  
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3  
(13)



**§685. Action taken on substance use tests**

Action taken by an employer on the basis of a substance use test is limited as provided in this section. [PL 2017, c. 407, Pt. A, §109 (AMD).]

**1. Before receipt of test results.** An employer may suspend an employee with full pay and benefits or may transfer the employee to another position with no reduction in pay or benefits while awaiting an employee's test results.

[PL 1989, c. 536, §§1, 2 (NEW); PL 1989, c. 604, §§2, 3 (AFF).]

**2. Use of confirmation test results.** This subsection governs an employer's use of confirmed positive results and an employee's or applicant's refusal to submit to a test requested or required by an employer in compliance with this subchapter.

A. Subject to any limitation of the Maine Human Rights Act or any other state law or federal law, an employer may use a confirmed positive result or refusal to submit to a test as a factor in any of the following decisions:

- (1) Refusal to hire an applicant for employment or refusal to place an applicant on a roster of eligibility;
- (2) Discharge of an employee;
- (3) Discipline of an employee; or
- (4) Change in the employee's work assignment. [PL 1995, c. 324, §7 (AMD).]

A-1. An employer who tests a person as an applicant and employs that person prior to receiving the test result may take no action on a positive result except in accordance with the employee provisions of the employer's approved policy. [PL 1995, c. 324, §8 (NEW).]

B. Before taking any action described in paragraph A in the case of an employee who receives an initial confirmed positive result, an employer shall provide the employee with an opportunity to participate for up to 6 months in a rehabilitation program designed to enable the employee to avoid future use of a substance and to participate in an employee assistance program, if the employer has such a program. The employer may take any action described in paragraph A if the employee receives a subsequent confirmed positive result from a test administered by the employer under this subchapter. [PL 2017, c. 407, Pt. A, §109 (AMD).]

C. If the employee chooses not to participate in a rehabilitation program under this subsection, the employer may take any action described in paragraph A. If the employee chooses to participate in a rehabilitation program, the following provisions apply.

(1) If the employer has an employee assistance program that offers counseling or rehabilitation services, the employee may choose to enter that program at the employer's expense. If these services are not available from an employer's employee assistance program or if the employee chooses not to participate in that program, the employee may enter a public or private rehabilitation program.

(a) Except to the extent that costs are covered by a group health insurance plan, the costs of the public or private rehabilitation program must be equally divided between the employer and employee if the employer has more than 20 full-time employees. This requirement does not apply to municipalities or other political subdivisions of the State or to any employer when the employee is tested because of the alcohol and controlled substance testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V. If necessary, the employer shall assist in financing the cost share of the employee through a payroll deduction plan.

(b) Except to the extent that costs are covered by a group health insurance plan, an employer with 20 or fewer full-time employees, a municipality or other political subdivision of the State is not required to pay for any costs of rehabilitation or treatment under any public or private rehabilitation program. An employer is not required to pay for the costs of rehabilitation if the employee was tested because of the alcohol and controlled substance testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V.

(2) An employer may not take any action described in paragraph A while an employee is participating in a rehabilitation program, except as provided in subparagraph (2-A) and except that an employer may change the employee's work assignment or suspend the employee from active duty to reduce any possible safety hazard. Except as provided in subparagraph (2-A), an employee's pay or benefits may not be reduced while an employee is participating in a rehabilitation program, provided that the employer is not required to pay the employee for periods in which the employee is unavailable for work for the purposes of rehabilitation or while the employee is medically disqualified. The employee may apply normal sick leave and vacation time, if any, for these periods.

(2-A) A rehabilitation or treatment provider shall promptly notify the employer if the employee fails to comply with the prescribed rehabilitation program before the expiration of the 6-month period provided in paragraph B. Upon receipt of this notice, the employer may take any action described in paragraph A.

(3) Except as provided in divisions (a) and (b), upon successfully completing the rehabilitation program, as determined by the rehabilitation or treatment provider after consultation with the employer, the employee is entitled to return to the employee's previous job with full pay and benefits unless conditions unrelated to the employee's previous confirmed positive result make the employee's return impossible. Reinstatement of the employee may not conflict with any provision of a collective bargaining agreement between the employer and a labor organization that is the collective bargaining representative of the unit of which the employee is or would be a part. If the rehabilitation or treatment provider determines that the employee has not successfully completed the rehabilitation program within 6 months after starting the program, the employer may take any action described in paragraph A.

(a) If the employee who has completed rehabilitation previously worked in an employment position subject to random or arbitrary testing under an employer's written policy, the employer may refuse to allow the employee to return to the previous job if the employer believes that the employee may pose an unreasonable safety hazard because of the nature of the position. The employer shall attempt to find suitable work for the employee immediately after refusing the employee's return to the previous position. A reduction may not be made in the employee's previous benefits or rate of pay while the employee is awaiting reassignment to work or working in a position other than the previous job. The employee must be reinstated to the previous position or to another position with an equivalent rate of pay and benefits and with no loss of seniority within 6 months after returning to work in any capacity with the employer unless the employee has received a subsequent confirmed positive result within that time from a test administered under this subchapter or unless conditions unrelated to the employee's previous confirmed positive test result make that reinstatement or reassignment impossible. Placement of the employee in suitable work and reinstatement may not conflict with any provision of a collective bargaining agreement between the employer and a labor organization that is the collective bargaining representative of the unit of which the employee is or would be a part.

(b) Notwithstanding division (a), if an employee who has successfully completed rehabilitation is medically disqualified, the employer is not required to reinstate the

employee or find suitable work for the employee during the period of disqualification. The employer is not required to compensate the employee during the period of disqualification. Immediately after the employee's medical disqualification ceases, the employer's obligations under division (a) attach as if the employee had successfully completed rehabilitation on that date. [PL 2017, c. 407, Pt. A, §109 (AMD).]

D. This subsection does not require an employer to take any disciplinary action against an employee who refuses to submit to a test, receives a single or repeated confirmed positive result or does not choose to participate in a rehabilitation program. This subsection is intended to set minimum opportunities for an employee with a substance use problem to address the problem through rehabilitation. An employer may offer additional opportunities, not otherwise in violation of this subchapter, for rehabilitation or continued employment without rehabilitation. [PL 2017, c. 407, Pt. A, §109 (AMD).]

[PL 2017, c. 407, Pt. A, §109 (AMD).]

**3. Confidentiality.** This subsection governs the use of information acquired by an employer in the testing process.

A. Unless the employee or applicant consents, all information acquired by an employer in the testing process is confidential and may not be released to any person other than the employee or applicant who is tested, any necessary personnel of the employer and a provider of rehabilitation or treatment services under subsection 2, paragraph C. This paragraph does not prevent:

(1) The release of this information when required or permitted by state or federal law, including release under section 683, subsection 8, paragraph D; or

(2) The use of this information in any grievance procedure, administrative hearing or civil action relating to the imposition of the test or the use of test results. [PL 1989, c. 536, §§1, 2 (NEW); PL 1989, c. 604, §§2, 3 (AFF).]

B. Notwithstanding any other law, the results of any substance use test required, requested or suggested by any employer may not be used in any criminal proceeding. [PL 2017, c. 407, Pt. A, §109 (AMD).]

[PL 2017, c. 407, Pt. A, §109 (AMD).]

#### SECTION HISTORY

PL 1989, c. 536, §§1,2 (NEW). PL 1989, c. 604, §§2,3 (AMD). PL 1989, c. 832, §§12,13 (AMD). PL 1995, c. 324, §§7,8 (AMD). PL 1995, c. 344, §1 (AMD). PL 2003, c. 547, §3 (AMD). PL 2017, c. 407, Pt. A, §109 (AMD).

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**§10. Imagination Library of Maine Program**

The Imagination Library of Maine Program, referred to in this section as "the program," is established within the Maine State Library for the purposes of developing, implementing, promoting and fostering a comprehensive statewide initiative to encourage children from birth to 5 years of age to develop a love of reading and learning. [PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

**1. Fund purpose.**

[PL 2023, c. 412, Pt. DDDDD, §1 (RP).]

**1. Imagination Library of Maine Fund established; purpose.** The Imagination Library of Maine Fund, referred to in this section as "the fund," is established within the Maine State Library. The State Librarian shall administer the fund. All money in the fund must be used for the purposes set forth in this section. Any fund balance at the close of the fiscal year does not lapse but must be carried forward to the next fiscal year and used only for the purposes specified in this section.

A. The purpose of the fund is to promote and encourage reading by children in this State and to provide through a statewide initiative, at no cost to families of children enrolled in the program, age-appropriate books to children from birth to 5 years of age through a nonprofit imagination library organization. [PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

B. The fund must be used to provide a dollar-for-dollar match of the funds needed to provide, through the nonprofit imagination library organization under paragraph A, one age-appropriate book to each enrolled child from birth to 5 years of age in participating counties in this State through a qualified local entity that agrees to a dollar-for-dollar match for purposes of the program. Books must be sent monthly to each child's home at no cost to families of those children. [PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

C. The nonprofit imagination library organization under paragraph A or a statewide nonprofit entity shall serve as the fiscal agent for the fund, including the provision of all records and information necessary for the Maine State Library to report to the Legislature as required pursuant to subsection 5. [PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

As used in this section, "nonprofit imagination library organization" means an organization that is exempt from federal taxation under Section 501(c)(3) of the United States Internal Revenue Code of 1986, that is based in the United States and that provides, at no charge, regardless of the income of the family, books to children from birth to 5 years of age worldwide. As used in this section, "qualified local entity" means any existing or new local affiliate with the nonprofit imagination library organization.

[PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

**2. Match.**

[PL 2023, c. 412, Pt. DDDDD, §1 (RP).]

**3. Duties of State Librarian.**

[PL 2023, c. 412, Pt. DDDDD, §1 (RP).]

**4. Coordination with nonprofit imagination library organization.** The Maine State Library shall coordinate with a nonprofit imagination library organization or a statewide entity, qualified under Section 501(c)(3) of the United States Internal Revenue Code of 1986, for the purpose of implementing the program.

The Maine State Library shall work with a nonprofit imagination library organization or a statewide nonprofit entity to:

A. Promote the statewide development of local programs affiliated with the program; [PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

B. Advance and strengthen local programs affiliated with the program with the goal of increasing enrollment in the local programs; [PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

C. Develop community engagement in local programs affiliated with the program; [PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

D. Develop, promote and coordinate a campaign to make the public aware of the opportunity to donate to local programs affiliated with the program and to make the public aware of the opportunity to enroll eligible children to receive books through a local program; [PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

E. Administer the local funding match requirement and coordinate the collection and remittance of books and mailing costs of local programs affiliated with the program; [PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

F. Develop statewide marketing and communication plans of the program; and [PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

G. Solicit donations, gifts and other funding to financially support local programs affiliated with the program. [PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]  
[PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

**5. Report to Legislature.** The Maine State Library shall report to the Legislature, by January 1, 2024 and annually thereafter, on the following:

A. The deposits made to, and expenditures made from, the fund; [PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

B. Whether any local funding match requirements were waived; [PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

C. How many local programs affiliated with the program exist, where they are located and which entity or organization, if any, serves as the local partner; and [PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

D. The number of children enrolled in the program and the number of books sent to enrolled children. [PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

[PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

**6. Confidentiality.** Any records containing the name, address or any other personally identifiable information relating to the parents and children participating in the program are confidential and may not be disclosed other than:

A. In a de-identified, aggregate form for study, evaluation or audit of the program; and [PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

B. With informed parental consent and for the purpose of expanding access to the program, to other state agencies, including, but not limited to, the Department of Corrections, the Department of Education and the Department of Health and Human Services. [PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

[PL 2023, c. 412, Pt. DDDDD, §1 (NEW).]

**SECTION HISTORY**

PL 2021, c. 635, Pt. LL, §1 (NEW). PL 2023, c. 412, Pt. DDDDD, §1 (RPR).

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**Ref. #**  
**(previous ref. #)**

5  
(34)



**§114. Confidentiality**

The home address, telephone number and e-mail address of the applicant, employees of the applicant and all natural persons having a direct or indirect financial interest in the applied-for license are confidential. [PL 2023, c. 396, §3 (NEW).]

**SECTION HISTORY**

PL 2023, c. 396, §3 (NEW).

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**STATUTE: 28-B MRSA §114**

**AGENCY: Department of Administrative and Financial Services; Office of Cannabis Policy**

**CONTACT PERSON: FOAArequest.DAFS@Maine.gov, Gabi Pierce (gabi.pierce@maine.gov)**

**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 provision is similar to the general exception from the definition of "public record" in FOAA included in 1 MRS § 402(3)(O) regarding the personal information of public employees. That provision of FOAA was also extended to registrants and applicants for a registry identification card in Maine's medical cannabis program last year. *See P.L. 2023, ch. 637, § 2.*

The Office of Cannabis Policy regularly receives FOA requests for the contact information of program participants from individuals and companies seeking to market directly to those program participants. OCP makes publicly available on our website a variety of information about participants in the programs administered by our office, but it is our expectation that we would be constantly fielding requests for this personal contact information for commercial purposes were it not exempted.

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

OCP supports the continuation of this exception because it ensures that OCP is able to communicate directly with program participants using any method of communication that is most convenient for the program participants without risking disclosure (and potential abuse) of personal information that the program participant does not intend to make public.

Given the personal, sensitive nature of such personal contact information, there are certainly safety concerns regarding disclosure of such information, and such risks associated with such disclosure outweigh any benefits that could be derived. In light of these risks and the other licensee-specific contact information that is available and not subject to this confidentiality provision, OCP believes 28-B MRS § 114 is narrowly tailored to protect the personal privacy of program participants while ensuring that the public has information available to discern the identity of participants in the adult use cannabis program and contact such individuals through their business as necessary.

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?

OCP has not encountered any problems with the administration of this provision. The covered records are clear, as is the legislative intent to make such records confidential.

4. Does your agency recommend changes to this exception?

Not 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.

Adult use cannabis program participants may have additional thoughts on the confidentiality of the information protected by this provision, but no particular program participant has expressed a particular opinion on this provision, as it has been a feature of the program statute since its inception.

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

OCP has no additional information to provide at this time.

**Ref. #**  
**(previous ref. #)**

**6**  
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**§204. Criminal history record check**

The office shall request a criminal history record check for each applicant for an initial license under this chapter and for each licensee every 2 years thereafter. If the applicant or licensee is a business entity, every principal of the business entity is required to submit to a criminal history record check in accordance with this section. A criminal history record check conducted pursuant to this section must include criminal history record information obtained from the Maine Criminal Justice Information System established in Title 16, section 631 and the Federal Bureau of Investigation. [PL 2023, c. 679, Pt. B, §28 (AMD).]

**1. Record of public criminal history information required.** Criminal history record information obtained from the Maine Criminal Justice Information System pursuant to this section must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8. [PL 2017, c. 409, Pt. A, §6 (NEW).]

**2. Other state and national criminal history record information required.** Criminal history record information obtained from the Federal Bureau of Investigation pursuant to this section must include other state and national criminal history record information. [PL 2017, c. 409, Pt. A, §6 (NEW).]

**3. Fingerprinting.** An individual required to submit to a criminal history record check under this section shall submit to having the individual's fingerprints taken. The State Police, upon payment by the individual of the fee required under subsection 4, shall take or cause to be taken the individual's fingerprints and shall forward the fingerprints to the Department of Public Safety, Bureau of State Police, State Bureau of Identification. The State Bureau of Identification shall conduct the state and national criminal history record checks required under this section. Except for the portion of a payment, if any, that constitutes the processing fee for a criminal history record check charged by the Federal Bureau of Investigation, all money received by the State Police under this section must be paid to the Treasurer of State, who shall apply the money to the expenses incurred by the Department of Public Safety in the administration of this section. [PL 2017, c. 409, Pt. A, §6 (NEW).]

**4. Fees.** The office shall by rule set the amount of the fee to be paid by an individual under subsection 3 for each criminal history record check required to be performed under this section. [PL 2023, c. 679, Pt. B, §29 (AMD).]

**5. Availability of criminal history record information.** The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709. [PL 2017, c. 409, Pt. A, §6 (NEW).]

**6. Use of criminal history record information.** State and national criminal history record information obtained by the office under this section may be used only for the purpose of screening an applicant for a license or a licensee under this chapter or as necessary for the issuance of an individual identification card under section 106. [PL 2023, c. 679, Pt. B, §30 (AMD).]

**7. Confidentiality.** All criminal history record information obtained by the office pursuant to this section is confidential, is for the official use of the office only and may not be disseminated outside of the office or disclosed to any other person or entity except as provided in subsection 5. [PL 2023, c. 679, Pt. B, §31 (AMD).]

**8. Rules.** The office, after consultation with the Department of Public Safety, Bureau of State Police, State Bureau of Identification, shall adopt rules to implement this section.

[PL 2023, c. 679, Pt. B, §32 (AMD).]

SECTION HISTORY

PL 2017, c. 409, Pt. A, §6 (NEW). PL 2023, c. 679, Pt. B, §§28-32 (AMD).

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**STATUTE: 28-B MRSA §204, sub-§7**

**AGENCY: Department of Administrative and Financial Services; Office of Cannabis Policy**

**CONTACT PERSON: FOAArequest.DAFS@Maine.gov, Gabi Pierce  
(gabi.pierce@maine.gov)**

**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 is a standard privacy requirement applicable to all criminal history record information obtained from the Federal Bureau of Investigation and is generally mirrored in state law in Title 16, ch. 7. Because this provision exists, OCP rarely, if ever, receives FOA requests for this information.

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

OCP strongly supports the continuation of this exception, as the conduct of FBI criminal history record checks for principals of adult use cannabis establishments is a statutory prerequisite to obtain or maintain a license under Title 28-B, and the FBI will not conduct such background checks without such statutory protection of confidential information contained in those criminal history records.

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?

OCP has not encountered any problems with the administration of this provision. The covered records are clear, as is the legislative intent to make such records confidential.

4. Does your agency recommend changes to this exception?

Not 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.

Adult use cannabis program participants may have additional thoughts on the confidentiality of the information protected by this provision, but no particular program participant has expressed a particular opinion on this provision, as it has been a feature of the program statute since its inception.

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

OCP has no additional information to provide at this time.

**Ref. #**  
**(previous ref. #)**

7  
(36)



**§511. Record keeping and inspection of records; audits**

**1. Record keeping; inspection of records.** A licensee shall maintain a complete set of all records of the licensee's business transactions, which may be stored electronically. Upon providing at least 24 hours' notice, the office may inspect or audit the licensee's records during regular business hours. The office may not conduct an audit of a licensee's records more than twice in any 6-month period. The cost of any audit must be paid by the office from the Adult Use Cannabis Regulatory Coordination Fund under section 1102. Nothing in this subsection may be construed to prevent the office from reviewing at any time business records submitted through the tracking system in accordance with section 105. Records must be maintained by a licensee at a minimum for a period comprising the current tax year and the 6 immediately preceding tax years in accordance with Title 36, section 135.

[PL 2023, c. 679, Pt. B, §109 (AMD).]

**2. Additional information may be required.**

[PL 2023, c. 679, Pt. B, §109 (RP).]

**3. Audit.** The office may require a licensee to submit to an audit of the licensee's business records. If the office requires a licensee to submit to an audit, the licensee shall provide the auditor selected by the office with access to all business records of the licensee and the cost of the audit must be paid by the office from the Adult Use Cannabis Regulatory Coordination Fund under section 1102.

[PL 2023, c. 679, Pt. B, §109 (AMD).]

**4. Confidentiality.** This subsection governs the confidentiality of records under this section.

A. Documents of a licensee inspected or examined by the office pursuant to this section are confidential and may not be disclosed except as needed in a civil or criminal proceeding to enforce any provision of this chapter and the rules adopted pursuant to this chapter or any criminal law.

[PL 2023, c. 679, Pt. B, §109 (AMD).]

B. Audit working papers are confidential and may not be disclosed to any person outside the office, except that audit working papers may be disclosed to the licensee subject to the audit. A final audit report is a public record for the purposes of Title 1, chapter 13, subchapter 1. For the purposes of this paragraph, "audit working papers" means all documentation and other information acquired, prepared or maintained by the office and the auditor selected by the office during the conduct of the audit, including, but not limited to, draft reports and portions of draft reports.

[PL 2023, c. 679, Pt. B, §109 (AMD).]

[PL 2023, c. 679, Pt. B, §109 (AMD).]

**SECTION HISTORY**

PL 2017, c. 409, Pt. A, §6 (NEW). PL 2019, c. 231, Pt. A, §1 (AMD). PL 2023, c. 679, Pt. B, §109 (AMD).

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**STATUTE: 28-B MRSA §511, sub-§4**

**AGENCY: Department of Administrative and Financial Services; Office of Cannabis Policy**

**CONTACT PERSON: FOArequest.DAFS@Maine.gov, Gabi Pierce (gabi.pierce@maine.gov)**

**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).

OCP occasionally receives requests for business records made confidential under this section. Those requests come from attorneys in anticipation of litigation between where at least one of the parties is licensed in Maine's adult use cannabis program (property or contract disputes, divorce actions, etc). Approximately 1 in 15 FOA requests received by OCP includes records in whole or in part that are excepted from disclosure in accordance with this section.

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

OCP supports the continuation of this exception because the courts, not OCP, are better equipped to deal with issues related to discovery in litigation. Furthermore, the records covered by this exception are necessary to the work of OCP in administering and ensuring compliance with the Cannabis Legalization Act, and often have real commercial value as proprietary information, but very little value to the public in general, in terms of ensuring appropriate public oversight of the functions of the Office. Removal of this

provision will make it difficult for OCP maintain robust oversight of licensee compliance with program requirements, and it will likely lead to more litigation as licensees assert their privilege against disclosure of proprietary information 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?

In light of the changes to 28-B MRS § 511 included in P.L. 2023, ch. 679, § B-109, including changes to sub-§ 1 and striking sub-§ 2, the scope of sub-§ 4, and what, exactly, is a “business record” covered by this exception is a bit fuzzy. While context may suggest that the business records referenced therein are “records of the licensee’s business transactions”, what records are or are not included therein is less clear. Based on the language as written, and given the potential for overlap with privilege against disclosure of trade secrets, it is likely that OCP would broadly construe what is considered a “business record” excepted from disclosure in accordance with § 511, which could frustrate the legislative intent of FOAA. An alternative approach, notifying licensees on a request-by-request basis when their business records are implicated in a FOA request, could result in protracted timeframes for production of such records if licensees choose to file to enjoin OCP from disclosing the records that contain such privileged information.

4. Does your agency recommend changes to this exception?

OCP recommends that the committee define the term “business record” to clarify what records are covered by the exception in § 511. The following definition would likely address the potential challenges addressed in response to question # 3 above:

Business record means records of a licensee’s business transactions including inventory tracking system records, bank records, records including detailed and general income and expense information, contracts including lease agreements or licensing agreements and any records within the control of the office that detail security plans or equipment used at the licensed premises of a cannabis establishment.

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

Hannah King, Esq. – Dentons: (207) 835-4354, [hannah.king@dentons.com](mailto:hannah.king@dentons.com)

Jill Cohen, Esq. – Verrill: (207) 253-4834; [jgcohen@verrill-law.com](mailto:jgcohen@verrill-law.com)

Dan Walker, Esq. – Preti: [DWalker@preti.com](mailto:DWalker@preti.com)

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

OCP has no additional information provide at this time.



**Ref. #**  
**(previous ref. #)**

8  
(37)



**§152. Powers of Secretary of State**

The Secretary of State may: [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**1. Investigation for information.** Make necessary investigations for information required to carry out the provisions of this Title, including, but not limited to, review of records and investigations in the field;

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**2. Deputize agents, examiners and detectives.** Appoint and deputize agents, examiners and motor vehicle detectives, stationed at convenient places, to receive applications for registration and licenses for the operation of vehicles, to conduct examinations and to perform assigned duties.

A motor vehicle detective has the powers and duty to enforce all provisions of this Title and Title 17-A and all the laws of the State with the same powers that a sheriff has in a county. A motor vehicle detective is at all times subject to all other investigatory duties assigned by the Secretary of State.

[PL 2017, c. 229, §8 (AMD).]

**3. Central computer system.** Notwithstanding any other provisions of law, purchase and maintain a central computer system for purposes of administering this Title and conducting departmental operations. All other uses must be approved by the Secretary of State. The Secretary of State shall adopt rules regarding the maintenance and use of data processing information files required to be kept confidential and shall distinguish those files from files available to the public;

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**4. Facsimile signature of Secretary of State.** Use a facsimile signature, which has the same validity as the Secretary of State's written signature and is admissible in court;

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**5. Assign new identification number.** Assign a new identification number to a vehicle if it has none, or if the vehicle's identification number is destroyed or obliterated, or if the frame, chassis or, if the vehicle is a truck, the cab is changed, or if the vehicle is a reconstructed motorcycle, and shall issue a new certificate of title showing the new identification number upon surrender of the old certificate and completion of an application for title and payment of the fee;

[PL 2023, c. 257, §1 (AMD).]

**6. Other data.** Require data necessary on forms, applications, certificates, licenses or other documents; and

[PL 2023, c. 257, §2 (AMD).]

**7. Waive penalty or fee.** Waive a penalty or fee required under this Title if the Secretary of State or the secretary's designee determines that the circumstances justify a waiver. The Secretary of State shall adopt rules to administer this subsection that must include but are not limited to rules identifying circumstances that may justify a waiver. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2023, c. 257, §3 (NEW).]

**SECTION HISTORY**

PL 1993, c. 683, §A2 (NEW). PL 1993, c. 683, §B5 (AFF). PL 1997, c. 776, §§4,5 (AMD). PL 2001, c. 361, §4 (AMD). PL 2007, c. 12, §1 (AMD). PL 2017, c. 229, §8 (AMD). PL 2023, c. 257, §§1-3 (AMD).

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**Ref. #**  
**(previous ref. #)**

9  
(38)



**§251. Records and databases related to driver's licenses and motor vehicles**

**1. Records required to be kept.** The Secretary of State shall keep a record of applications for driver's licenses, motor vehicle registrations and certificates of title and of issued driver's licenses, learner's permits, motor vehicle registrations and certificates of title.

[PL 2013, c. 381, Pt. B, §9 (AMD).]

**2. Public access to records.** Records of the Secretary of State pertaining to the applications, registrations and certifications of vehicles and to driver's licenses must be open to public inspection during office hours. The Secretary of State shall provide a copy of a record pertaining to the applications, registrations and certifications of vehicles or to driver's licenses for a fee of \$5 each.

[PL 2003, c. 434, §4 (AMD); PL 2003, c. 434, §37 (AFF).]

**2-A. Databases.** The Secretary of State may provide databases of records pertaining to applications, registrations and certifications of vehicles and to driver's licenses to individuals, businesses and other entities as allowed by section 256 and all other applicable laws. The Secretary of State shall adopt rules to establish a fee schedule and governing procedures.

[PL 2023, c. 257, §4 (AMD).]

**3. Complaints confidential.** Written complaints and certain control numbers used in the titling of motor vehicles may be kept confidential.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**4. Confidentiality of e-mail addresses.** If a person submits an e-mail address as part of the application process for a license or registration under this Title, the e-mail address is confidential and may not be disclosed to anyone outside the Department of the Secretary of State except for law enforcement officers or for purposes of court proceedings.

[PL 2013, c. 283, §1 (NEW).]

**SECTION HISTORY**

PL 1993, c. 683, §A2 (NEW). PL 1993, c. 683, §B5 (AFF). PL 2003, c. 434, §4 (AMD). PL 2003, c. 434, §37 (AFF). PL 2013, c. 283, §1 (AMD). PL 2013, c. 381, Pt. B, §9 (AMD). PL 2023, c. 257, §4 (AMD).

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**Ref. #**  
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10  
(39)



**§253. Confidentiality of nongovernment vehicle records**

Upon receiving a written request by an appropriate criminal justice official and showing cause that it is in the best interest of public safety, the Secretary of State may determine that records of a nongovernment vehicle may be held confidential for a specific period of time, which may not exceed the expiration of the current registration. [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**SECTION HISTORY**

PL 1993, c. 683, §A2 (NEW). PL 1993, c. 683, §B5 (AFF).

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**Ref. #**  
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11  
(40)



## §255. Confidentiality for public safety

**1. Confidential records.** Notwithstanding any other provision of law, the Secretary of State or a designee of the Secretary of State may hold records relating to a person's motor vehicle registration and driver's license confidential for a specified period of time when the following conditions are met:

A. The Secretary of State has received a written request along with a copy of a protection order that has been issued under Title 5, section 4654 or 4655; Title 15, section 321; Title 19-A, section 4108 or 4110; or Title 22, chapter 1071 to protect the requestor from harassment or abuse; or [PL 2023, c. 405, Pt. A, §108 (AMD).]

B. The Secretary of State or a designee of the Secretary of State has:

(1) Received a written request showing cause that a person is in danger of serious bodily injury or death by another person and that the endangered person is relocating for the specific purpose of avoiding harm;

(2) Consulted with the Commissioner of Public Safety or a designee of the commissioner and the Attorney General or a designee of the Attorney General; and

(3) Determined that holding the endangered person's driver's license and motor vehicle registration records as confidential is in the best interest of public safety. [PL 1995, c. 645, Pt. B, §6 (NEW); PL 1995, c. 645, Pt. B, §24 (AFF).]

[PL 2023, c. 405, Pt. A, §108 (AMD).]

**2. Release of records.** The Secretary of State may release information held in confidence pursuant to subsection 1 to law enforcement officers, insurance companies and municipal, county, state or federal agencies that demonstrate a necessity for the information. The Secretary of State shall prescribe the conditions under which the information may be used and the person receiving the information may only use the information as prescribed.

[PL 1995, c. 645, Pt. B, §6 (NEW); PL 1995, c. 645, Pt. B, §24 (AFF).]

**3. Liability for release.** Neither failure of the Secretary of State or an employee of the Secretary of State to perform the requirements of this section nor compliance with it subjects the Secretary of State or employees of the Secretary of State to liability in a civil action.

[PL 1995, c. 645, Pt. B, §6 (NEW); PL 1995, c. 645, Pt. B, §24 (AFF).]

**4. Rules.** The Secretary of State may, in consultation with the Commissioner of Public Safety and the Attorney General, adopt rules necessary for the implementation of this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[PL 1995, c. 645, Pt. B, §6 (NEW); PL 1995, c. 645, Pt. B, §24 (AFF).]

### SECTION HISTORY

PL 1995, c. 645, §B6 (NEW). PL 1995, c. 645, §B24 (AFF). PL 2023, c. 405, Pt. A, §108 (AMD).

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**Ref. #**  
**(previous ref. #)**

12  
(41)



**§257. Confidentiality of technology system information**

**(REPEALED)**

**SECTION HISTORY**

PL 2003, c. 434, §6 (NEW). PL 2003, c. 434, §37 (AFF). PL 2015, c. 250, Pt. C, §4 (RP).

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**Ref. #**  
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13  
(42)



**§517. Government vehicles**

**1. Exemption.** The following vehicles are exempt from registration fees, but must be registered and are subject to inspection requirements:

- A. Vehicles owned by the State; [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]
  - B. Vehicles owned by a county; [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]
  - C. Vehicles owned or used by a municipality; [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]
  - D. [PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §4 (RP); PL 1995, c. 65, Pt. C, §15 (AFF).]
  - E. Vehicles owned by a school district; [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]
  - F. Vehicles owned by a water district; [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]
  - G. Vehicles loaned by a dealer for use in driver education in a public school or private secondary school; [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]
  - H. Vehicles loaned by a dealer to a municipality for use by a law enforcement agency for educational purposes; [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]
  - I. Vehicles loaned to the University of Maine System and the Maine Community College System and used in organized programs; [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]
  - J. Vehicles owned by the University of Maine System; [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]
  - K. School buses operated under a lease of at least 30 days to a municipality or school district; and [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]
  - L. Vehicles used in volunteer ambulance or rescue squad services. [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]
- [PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §4 (AMD); PL 1995, c. 65, Pt. C, §15 (AFF); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

**1-A. Vehicles owned or used by fire departments.** Vehicles owned or used exclusively by municipal fire departments or volunteer fire associations as defined in Title 30-A, section 3151 are exempt from registration requirements and registration fees. The Secretary of State shall register vehicles owned or used exclusively by a municipal fire department or a volunteer fire association upon request of the municipality or volunteer fire association.

Vehicles owned or used by municipal fire departments or volunteer fire associations are not exempt from the inspection requirements of chapter 15, subchapter I.  
[PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §5 (NEW); PL 1995, c. 65, Pt. C, §15 (AFF).]

**1-B. Low-speed vehicle.** A low-speed vehicle loaned by a dealer to a municipality is exempt from registration fees and is not subject to inspection pursuant to section 1752 but must be registered and must be in compliance with equipment provisions under section 1925.  
[PL 2003, c. 490, Pt. D, §1 (NEW).]

**2. Plates.** The Secretary of State shall issue distinctive plates that expire at the end of a 6-year period for state plates and a 10-year period for municipal plates within the semipermanent plate program. Notwithstanding section 501, subsection 11, the Secretary of State shall issue distinctive municipal plates under this subsection to a low-speed vehicle owned by a municipality or loaned by a dealer to a municipality. Vehicles owned by the State may display a marker or insignia, approved by the Secretary of State, plainly designating them as owned by the State.

The Secretary of State may issue environmental or sportsman registration plates to a state-owned vehicle assigned to the Department of Inland Fisheries and Wildlife or the Department of Agriculture, Conservation and Forestry with authorization from the department's commissioner. The Secretary of State may issue environmental or sportsman registration plates to a state-owned vehicle assigned to the Baxter State Park Authority with authorization from the Commissioner of Inland Fisheries and Wildlife in the commissioner's capacity as a member of the Baxter State Park Authority. A state-owned vehicle issued environmental or sportsman registration plates must display a marker or insignia designating the vehicle as state-owned and is exempt from registration fees and the contribution under section 455, subsection 4.

The Secretary of State may issue agricultural education plates to a state-owned vehicle assigned to the Department of Agriculture, Conservation and Forestry with authorization from the Commissioner of Agriculture, Conservation and Forestry. A state-owned vehicle issued agricultural education plates must display a marker or insignia designating the vehicle as state-owned and is exempt from registration fees and the contribution under section 456-F, subsection 2.

The Secretary of State may issue lobster plates to a state-owned vehicle assigned to the Department of Marine Resources with authorization from the Commissioner of Marine Resources. A state-owned vehicle issued lobster plates must display a marker or insignia designating the vehicle as state-owned and is exempt from registration fees and the contribution under section 456-A, subsection 2.

[PL 2009, c. 598, §3 (AMD); PL 2011, c. 657, Pt. W, §§5, 6 (REV).]

**3. Exception.** If an exempt vehicle is leased or rented for commercial purposes, registration fees must be paid for that vehicle.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**4. Unmarked law enforcement vehicles.** An unmarked motor vehicle used primarily for law enforcement purposes, when authorized by the Secretary of State and upon approval from the appropriate requesting authority, is exempt from displaying a special registration plate. Records for all unmarked vehicle registrations are confidential.

[PL 2015, c. 250, Pt. C, §5 (AMD).]

**5. Municipal police vehicles.** A vehicle owned by a municipality and used by a full-time law enforcement department may be issued special police registration plates at the request of the chief law enforcement official of that municipality.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**6. Federal government vehicles.** The Secretary of State may issue registration certificates and plates without fee to federal or other governmental agencies. Vehicles owned by the Federal Government used under lease to a Maine resident must be registered in this State.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**7. County sheriff vehicles.** A vehicle owned by a county and used by a full-time law enforcement department may be issued special registration plates at the request of the chief law enforcement official of the county. The Secretary of State, in consultation with the Maine Sheriffs' Association, shall design county law enforcement registration plates. A county sheriff requesting special plates shall reimburse the Highway Fund the cost associated with the production and issuance of the plates.

[PL 1995, c. 428, §1 (NEW).]

**8. Unmarked vehicles for child welfare purposes.** Notwithstanding Title 5, section 7, an unmarked motor vehicle used regularly for work protecting the welfare of children under Title 22, chapter 1071, when authorized by the Secretary of State and upon approval from the appropriate requesting authority, is exempt from displaying a special registration plate.

[PL 2023, c. 542, §1 (NEW).]

#### SECTION HISTORY

PL 1993, c. 683, §A2 (NEW). PL 1993, c. 683, §B5 (AFF). PL 1995, c. 65, §§A91,C4,5 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1995, c. 202, §1 (AMD). PL 1995, c. 428, §1 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF). PL 2003, c. 490, §§D1,2 (AMD). PL 2009, c. 435, §4 (AMD). PL 2009, c. 598, §3 (AMD). PL 2011, c. 657, Pt. W, §§5, 6 (REV). PL 2015, c. 250, Pt. C, §5 (AMD). PL 2023, c. 542, §1 (AMD).

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**Ref. #**  
**(previous ref. #)**

14  
(43)



**§1258. Medical Advisory Board**

**1. Board.** The Medical Advisory Board, as established by Title 5, section 12004-I, subsection 84, consists of members appointed by the Secretary of State. Membership of the board is as follows.

A. The board must include licensed physicians representing the specialties of cardiology, gerontology, internal medicine, neurology or neurological surgery, ophthalmology, psychiatry, family practice and rehabilitative medicine and may include additional members who are professionals in relevant medical fields. [PL 1995, c. 482, Pt. B, §19 (AMD).]

B. The Secretary of State shall designate the chair of the board. [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

C. Members of the board are entitled to compensation in accordance with Title 5, chapter 379. [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]  
[PL 1995, c. 482, Pt. B, §19 (AMD).]

**2. Duties.** The duties of the board are as follows.

A. The board shall meet at least once every 2 years and may hold as many meetings as necessary. [PL 2005, c. 433, §17 (AMD); PL 2005, c. 433, §28 (AFF).]

B. The board shall advise the Secretary of State on written medical and vision standards related to operator's licensing. Standards may only be adopted as rules. [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

C. The board shall coordinate efforts to educate health care providers and the public in the medical aspects of motor vehicle operator licensing. [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]  
[PL 2005, c. 433, §17 (AMD); PL 2005, c. 433, §28 (AFF).]

**3. Determination of competency.** The Secretary of State may request written medical reports to determine who receives records, testimony, recommendations and reports of the board and determine the competency of a person to operate a motor vehicle.  
[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**4. Board review.** The Secretary of State, having cause to believe that a licensed driver or applicant may not be physically or mentally qualified to be licensed, may obtain the advice of the board, a member of the board or another medical or paramedical professional licensed or certified in a medical specialty as follows.

A. The board may formulate advice from records and reports or may cause an examination and report to be made by a member or another qualified person. [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

B. The person under review may deliver a written report to the board and the board must give due consideration to the report. [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

C. The Secretary of State may request that the board interview in person someone whose ability to operate a motor vehicle safely is unascertainable through written reports or records. [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]  
[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**5. Suspension pending compliance.** The license of a person under review who refuses to submit to an examination or to provide information as requested by the Secretary of State pursuant to this subchapter may be suspended until the individual complies with the request.  
[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**6. Immunity.** A member of the board or other person making an examination and report of opinion, recommendation or advice to the Secretary of State in good faith is immune from criminal or civil liability for so doing. A physician or other person who becomes aware of a physical, mental or emotional impairment that appears to present an imminent threat to driving safety and reports this information to the Secretary of State in good faith is immune from criminal or civil liability for so doing. The immunity for damages under this subsection applies only to the extent that this immunity is not in conflict with federal law or regulation.  
[RR 1993, c. 2, §20 (COR).]

**7. Confidentiality.** A report received or made by the board, a member or the Secretary of State for the purpose of assisting the Secretary of State in determining whether a person is qualified to be licensed is confidential and only for the use of the board, the Secretary of State, medical personnel treating the person subject to review and the person subject to review.

These reports may not be divulged to another person unless the person subject to review gives written permission.

[PL 2015, c. 206, §5 (AMD).]

**8. Reporting.** Notwithstanding the provisions of Title 5, section 12005-A, the board is not required to file an annual report with the Secretary of State unless the board meets and exercises any of its powers and duties during a calendar year. In any calendar year in which the board meets and exercises any of its powers and duties, the board is subject to the provisions of Title 5, section 12005-A.  
[PL 2005, c. 433, §16 (NEW); PL 2005, c. 433, §28 (AFF).]

#### SECTION HISTORY

RR 1993, c. 2, §20 (COR). PL 1993, c. 683, §A2 (NEW). PL 1993, c. 683, §B5 (AFF). PL 1995, c. 482, §§A21, B19 (AMD). PL 2005, c. 433, §§16, 17 (AMD). PL 2005, c. 433, §28 (AFF). PL 2015, c. 206, §5 (AMD).

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**Ref. #  
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15  
(44)



**§1301. Application**

**1. Application required.** An applicant must present to the Secretary of State an application for license on a form prepared by the Secretary of State.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**2. Contents.** The applicant must provide specific answers that demonstrate the experience and competence of the applicant to operate a motor vehicle.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**2-A. Legal presence requirement.** The Secretary of State may not issue a license to an applicant unless the applicant presents to the Secretary of State valid documentary evidence of legal presence in the United States. Valid documentary evidence of legal presence for a United States citizen may include a United States passport that has been expired for less than 2 years.

[PL 2023, c. 634, §24 (AMD).]

**3. Proof of age.** An applicant who has not attained the age of 23 years must provide satisfactory proof of the applicant's date of birth prior to receiving a permit or original license.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**4. Examination.** An applicant must pass a physical examination by actual demonstration of ability to operate a motor vehicle and a written examination. Failure to complete the driving test within the term of a learner's permit requires reexamination for the permit.

[PL 2013, c. 381, Pt. B, §15 (AMD).]

**5. Permanent license number.**

[PL 2005, c. 250, §1 (RP).]

**6. Social security number.** Notwithstanding any other provision of law, the social security number of any applicant for a license or nondriver identification card must be recorded on the application, and the Secretary of State may not issue a license or nondriver identification card to a person who does not possess and provide a valid social security number. The Secretary of State shall collect, store and verify the social security number of an applicant for a license or nondriver identification card and may use that number to establish a permanent license number or nondriver identification number. This subsection does not apply to a person who provides written proof to the Secretary of State that the person is ineligible to receive a social security number.

[PL 2005, c. 250, §2 (RPR).]

**6-A. Confidentiality.** Except as required by 18 United States Code, Section 2721(b) or as needed to implement the federal National Voter Registration Act of 1993, the federal Help America Vote Act of 2002 or other federal election law, the Secretary of State may not disseminate information collected under subsection 6. For every willful violation of this subsection, a person commits a civil violation for which a fine of not more than \$500 may be adjudged.

[PL 2023, c. 257, §13 (AMD).]

**7. Physical examination.** A physical examination that may be required by the Secretary of State for the issuance or renewal of a license may be performed by a licensed physician, physician assistant, nurse practitioner or other competent treatment personnel as determined by the Medical Advisory Board.

[PL 2001, c. 159, §1 (NEW).]

**8. Organ and tissue donation.** This subsection applies to organ donation under section 1402-A.

A. Before issuing or renewing a driver's license, the Secretary of State shall make available to the applicant a short statement on the opportunity to save a life through organ and tissue donation and shall provide the applicant an opportunity to become an organ or tissue donor. The applicant must

be given a form on which to indicate whether the applicant intends to become a donor. [PL 2003, c. 394, §2 (NEW); PL 2003, c. 394, §6 (AFF).]

B. Information regarding the opportunity to save a life through organ and tissue donation must be prominently displayed on driver's license information mailed to applicants or distributed at offices of the bureau and must be prominently displayed on posters in offices of the bureau. [PL 2003, c. 394, §2 (NEW); PL 2003, c. 394, §6 (AFF).]

[PL 2003, c. 394, §2 (NEW); PL 2003, c. 394, §6 (AFF).]

**8. (REALLOCATED TO T. 29-A, §1301, sub-§9) Vehicle used for examination.**

[RR 2003, c. 1, §28 (RAL); PL 2003, c. 397, §4 (NEW); PL 2003, c. 397, §6 (AFF).]

**9. (REALLOCATED FROM T. 29-A, §1301, sub-§8) Vehicle used for examination.** An applicant for a license may not use a low-speed vehicle or autocycle to demonstrate ability to operate a motor vehicle as required under subsection 4.

[PL 2009, c. 55, §3 (AMD).]

**10. Expired documents.** The Secretary of State may not accept the following documents as identification for the purpose of issuing a nondriver identification card or driver's license:

A. An expired visa granted by the authority of the United States; [PL 2005, c. 469, §1 (NEW).]

B. An expired document issued by a foreign country; or [PL 2005, c. 469, §1 (NEW).]

C. A foreign passport showing an elapsed departure date. [PL 2005, c. 469, §1 (NEW).]

[PL 2005, c. 469, §1 (NEW).]

**11. Residency requirement.** A license may not be issued to a person unless the person presents acceptable documentary evidence of the person's residence or domicile in this State. The Secretary of State may exempt from the requirements of this subsection a person who has established to the satisfaction of the Secretary of State that the person is on active duty in the United States Armed Forces, the spouse or child of a person on active duty in the United States Armed Forces or a student enrolled in a university, college or school within the State.

A. Acceptable documentary evidence of a person's residence or domicile in this State must include the applicant's name and the address of the person's residence or domicile in this State. A post office box or other mail drop address is not sufficient. Acceptable documentary evidence includes, but is not limited to:

(1) A tax return, W-2 form or paycheck stub;

(2) A utility bill or a letter from a utility company showing application for service;

(3) A contract to which the applicant is a party; or

(4) A document issued by a governmental entity. [PL 2007, c. 659, §1 (NEW).]

B. A person who is unable to provide acceptable documentary evidence pursuant to paragraph A may meet the requirements of this subsection by:

(1) Submitting the affidavits of 2 individuals who have a personal or professional relationship with the person and knowledge of the person and the person's residence or domicile, which may include a shelter, in this State. A single affidavit signed by a parent or guardian of a minor making an application is sufficient for the purposes of this paragraph. The Secretary of State may reject any affidavit the Secretary of State determines to be insufficient to meet the requirements of this subsection. The affidavit is a sworn statement and a false statement by the affiant constitutes false swearing, which is a violation of Title 17-A, section 452. The Secretary of State shall provide forms for the completion of affidavits. These forms must state: "By signing this statement I verify that the representations herein are true. By making false

statements on this document, I realize I am committing a Class D crime punishable under Maine law."; or

(2) By taking an oath or affirmation before the Secretary of State swearing to the person's residence or domicile, which may include a shelter. [PL 2007, c. 659, §1 (NEW).]

An applicant who supplies false information pursuant to this subsection makes a material misstatement of fact described in section 2103 and is subject to the penalties under that section. [PL 2007, c. 659, §1 (NEW).]

**12. Selective service registration.** Before issuing or renewing a driver's license to a male United States citizen or immigrant who is at least 18 years of age and under 26 years of age, the Secretary of State shall provide the applicant with a short statement on the requirements of the federal Military Selective Service Act, 50 United States Code, Section 453 and a federal Military Selective Service registration form. If an applicant consents to register with the federal Selective Service System pursuant to this subsection, the Secretary of State shall forward the necessary information of the applicant to the federal Selective Service System. [PL 2011, c. 170, §1 (NEW).]

#### SECTION HISTORY

PL 1993, c. 683, §A2 (NEW). PL 1993, c. 683, §B5 (AFF). PL 1997, c. 437, §30 (AMD). PL 1997, c. 537, §59 (AMD). PL 1997, c. 537, §62 (AFF). PL 2001, c. 159, §1 (AMD). PL 2001, c. 671, §24 (AMD). RR 2003, c. 1, §28 (COR). PL 2003, c. 394, §2 (AMD). PL 2003, c. 394, §6 (AFF). PL 2003, c. 397, §4 (AMD). PL 2005, c. 250, §§1,2 (AMD). PL 2005, c. 469, §1 (AMD). PL 2007, c. 648, §1 (AMD). PL 2007, c. 659, §1 (AMD). PL 2009, c. 55, §3 (AMD). PL 2011, c. 149, §4 (AMD). PL 2011, c. 170, §1 (AMD). PL 2013, c. 163, §1 (AMD). PL 2013, c. 381, Pt. B, §15 (AMD). PL 2017, c. 27, §2 (AMD). PL 2017, c. 27, §10 (AFF). PL 2017, c. 229, §19 (AMD). PL 2023, c. 257, §13 (AMD). PL 2023, c. 634, §24 (AMD).

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**Ref. #**  
**(previous ref. #)**

16  
(45)



**§1401. Contents of license**

**1. Required information.** A license must state, at a minimum, the name, date of birth, place of residence or mailing address if different from the residence, of the licensee and the permanent number assigned to that licensee. A name displayed on a license must be as the name appears on a birth certificate or a court order or as the result of marriage.

[PL 1995, c. 482, Pt. A, §24 (AMD).]

**2. Photograph or digital image.** A license, except for a temporary license, must bear a full-face photograph or digital image of the licensee. The following are exempt from the photographic or digital image requirement:

A. [PL 2003, c. 434, §19 (RP); PL 2003, c. 434, §37 (AFF).]

B. A person in active military service stationed outside the State; and [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

C. Another person approved by the Secretary of State. [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

[PL 2017, c. 229, §25 (AMD).]

**3. Signature.** A licensee's signature must appear in the place designated. The signature must be the same as the name displayed on the license. A license is not valid until signed.

[PL 1995, c. 645, Pt. A, §14 (AMD).]

**4. Fee.**

[PL 2003, c. 434, §20 (RP); PL 2003, c. 434, §37 (AFF).]

**5. Record.**

[PL 1999, c. 470, §23 (RP).]

**6. Storage, recording, retention and distribution of digital images and digitized signatures.**

Digital images and digitized signatures used to produce a license are confidential and may be distributed only for use by a law enforcement agency in carrying out its functions or as otherwise authorized by rule adopted pursuant to section 256. The Secretary of State may store, record and retain digital images and digitized signatures used only for the purpose of producing a license. A violation of this subsection is a violation of section 2103, subsection 4.

[PL 2017, c. 229, §26 (AMD).]

**7. Graphic design.** The graphic design used on the license may not be reproduced, copied or distributed without the written consent of the Secretary of State. A violation of this subsection is a violation of section 2103, subsection 4.

[PL 1999, c. 470, §24 (NEW).]

**8. Security components.** The security components contained on the license may not be reproduced, copied or distributed without the written consent of the Secretary of State. A violation of this subsection is a violation of section 2103, subsection 4.

[PL 1999, c. 470, §24 (NEW).]

**9. Use of biometric technology.** The Secretary of State may use biometric technology, including, but not limited to, retinal scanning, facial recognition or fingerprint technology, to produce a license or nondriver identification card and may use facial recognition technology to search its image records to provide information, including digital images, to law enforcement agencies only to aid in emergency circumstances involving an immediate threat to the life of a person or pursuant to rules adopted under this subsection. A person, agency or entity other than the Secretary of State may not use biometric technology to search the Secretary of State's image records.

The Secretary of State may adopt rules establishing additional circumstances in which it will provide information, including digital images, produced by searching its records using facial recognition technology to law enforcement agencies. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2019, c. 634, §5 (AMD).]

#### SECTION HISTORY

PL 1993, c. 683, §A2 (NEW). PL 1993, c. 683, §B5 (AFF). PL 1995, c. 65, §§A153,C15 (AFF). PL 1995, c. 65, §B15 (AMD). PL 1995, c. 482, §A24 (AMD). PL 1995, c. 645, §A14 (AMD). PL 1997, c. 437, §§33-35 (AMD). PL 1999, c. 470, §§23,24 (AMD). PL 2003, c. 434, §§19,20 (AMD). PL 2003, c. 434, §37 (AFF). PL 2011, c. 149, §§5, 6 (AMD). PL 2017, c. 27, §3 (AMD). PL 2017, c. 27, §10 (AFF). PL 2017, c. 229, §§25, 26 (AMD). PL 2019, c. 634, §5 (AMD).

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**Ref. #**  
**(previous ref. #)**

17  
(46)



**§1410. Nondriver identification cards; information; fee**

**1. Application.** A nondriver identification card may not be issued to a person unless the person presents acceptable documentary evidence of the person's residence or domicile in this State. A post office box or mail drop address alone is not sufficient to meet this requirement. A person on active duty in the United States Armed Forces, the spouse or child of a person on active duty in the United States Armed Forces or a student enrolled in a university, college or school within the State may apply for a nondriver identification card without establishing a Maine residence or domicile. The documents acceptable to establish residence or domicile must include the applicant's name and the address of the person's residence or domicile in this State. Acceptable documentary evidence under this subsection is the same as for a license under section 1301, subsection 11, paragraphs A and B.

A. The application form must include, directly above the signature line, the following notice to the applicant: "I understand that knowingly supplying false information on this form is a Class D crime under Title 17-A, punishable by confinement of up to 364 days or by monetary fine of up to \$2,000, or both." [PL 2007, c. 659, §2 (RPR).]  
[PL 2007, c. 659, §2 (RPR).]

**2. Issuance of card; contents.** Except as provided by section 1255, upon receipt of a completed application and payment of a fee of \$5, the Secretary of State shall issue a nondriver identification card to the applicant. If an applicant is the holder of a motor vehicle driver's license bearing a photograph or digital image of the individual and issued under this chapter, the Secretary of State or the Secretary of State's representative may refuse to issue a nondriver identification card. The Secretary of State shall provide that a nondriver identification card issued to a person less than 21 years of age has a distinctive design layout or marking. Each nondriver identification card must contain:

- A. The applicant's photograph or digital image; [PL 1997, c. 437, §40 (NEW).]
- B. The applicant's name and address; [PL 1997, c. 437, §40 (NEW).]
- C. The applicant's date of birth; and [PL 2001, c. 671, §27 (AMD).]
- D. [PL 2001, c. 671, §28 (RP).]
- E. Any other information and identification that the Secretary of State by rule requires. [PL 1997, c. 437, §40 (NEW).]  
[PL 2019, c. 397, §24 (AMD).]

**2-A. Expedited issuance of nondriver identification cards.** An applicant requesting the expedited issuance of a nondriver identification card under this section must pay an additional fee of \$10 and provide the reason for the request. The Secretary of State shall determine if expedited issuance is warranted.  
[PL 2017, c. 229, §31 (NEW).]

**3. Validity.** A nondriver identification card issued under this section is not valid until signed by the applicant.  
[PL 1997, c. 437, §40 (NEW).]

**4. Expiration.** Each nondriver identification card issued pursuant to this section expires at midnight on the nondriver identification card holder's 6th birthday following the date of issuance.  
[PL 2013, c. 381, Pt. B, §27 (AMD).]

**5. Storage, recording, retention and distribution of digital images and digitized signatures.** Digital images and digitized signatures used to produce a nondriver identification card are confidential and may be distributed only for use by a law enforcement agency in carrying out its functions or as otherwise authorized under the provisions of 18 United States Code, Section 2721. The Secretary of State may store, record and retain digital images and digitized signatures used only for the purpose of

producing a nondriver identification card. A violation of this subsection is a violation of section 2103, subsection 4.

[PL 2011, c. 149, §7 (RPR).]

**6. Penalty.** A person who knowingly supplies false information on an application required under subsection 1 commits a Class D crime. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[RR 2019, c. 2, Pt. A, §29 (COR).]

**7. Maine Indian tribe identification cards.** An official identification card issued by a federally recognized Indian tribe in the State is deemed an identification card issued under this section. Cards issued under this subsection may be issued only to members of the tribe and must be stamped and issued by the clerk of the tribe. The identification card must state, at a minimum, the name, date of birth and place of residence, or mailing address if different from the residence, of the cardholder.

[PL 2001, c. 80, §1 (NEW).]

**8. Legal presence requirement.** The Secretary of State may not issue a nondriver identification card to an applicant unless the applicant presents to the Secretary of State valid documentary evidence of legal presence in the United States. Valid documentary evidence of legal presence for a United States citizen may include a United States passport that has been expired for less than 2 years.'

[PL 2023, c. 634, §27 (AMD).]

**9. Expiration of nondriver identification card; lawfully present noncitizens.** Notwithstanding any law to the contrary, a nondriver identification card issued to an applicant who is not a citizen or a legal permanent resident of the United States expires coterminously with the applicant's authorized duration of stay or 6 years, whichever is the shorter period of time. A nondriver identification card issued under this subsection must be valid for a period of at least 120 days.

[PL 2007, c. 648, §4 (NEW).]

**10. Selective service registration.** Before issuing or renewing a nondriver identification card to a male United States citizen or immigrant who is at least 18 years of age and under 26 years of age, the Secretary of State shall provide the applicant a short statement on the requirements of the federal Military Selective Service Act, 50 United States Code, Section 453 and a federal Military Selective Service registration form. If an applicant consents to register with the federal Selective Service System pursuant to this subsection, the Secretary of State shall forward the necessary information of the applicant to the federal Selective Service System.

[PL 2011, c. 170, §2 (NEW).]

**11. REAL ID compliant nondriver identification card; fee.** The fee for a nondriver identification card under section 1260 is \$30.

[PL 2017, c. 27, §7 (NEW); PL 2017, c. 27, §10 (AFF).]

#### SECTION HISTORY

PL 1997, c. 437, §40 (NEW). PL 2001, c. 80, §1 (AMD). PL 2001, c. 671, §§27,28 (AMD). PL 2007, c. 648, §§2-4 (AMD). PL 2011, c. 149, §7 (AMD). PL 2011, c. 170, §2 (AMD). PL 2013, c. 51, §6 (AMD). PL 2013, c. 163, §2 (AMD). PL 2013, c. 381, Pt. B, §27 (AMD). PL 2017, c. 27, §§6, 7 (AMD). PL 2017, c. 27, §10 (AFF). PL 2017, c. 229, §31 (AMD). PL 2019, c. 397, §24 (AMD). RR 2019, c. 2, Pt. A, §29 (COR). PL 2023, c. 634, §27 (AMD).

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**Ref. #**  
**(previous ref. #)**

18  
(47)



**§2117. Use of traffic surveillance cameras restricted**

Except as provided in subsections 1 and 2, the State or a municipality may not use a traffic surveillance camera to prove or enforce a violation of this Title. For purposes of this section, "traffic surveillance camera" means a device that, in conjunction with a lighted traffic-control device or a lane direction control device, as described in section 2057, subsections 1 and 3, or a speed measurement device as described in section 2075, subsection 4, automatically produces one or more photographs, one or more microphotographs, a videotape or any other recorded image of a vehicle at the time the vehicle is operated in violation of state law. [PL 2019, c. 318, §1 (AMD).]

 **1. School buses.** The State or a municipality may use a traffic surveillance camera mounted on a school bus in conjunction with a lighted traffic-control device to prove or enforce a violation of section 2308, subsection 2. A photograph, microphotograph, videotape or other recorded image or audio produced by a traffic surveillance camera mounted on a school bus is confidential and may only be released to a law enforcement officer for the purpose of an investigation into a violation of the law or to a law enforcement officer, prosecutor, defendant or court for the purpose of a prosecution of a violation of the law.

The state or a municipality may not retain a photograph, microphotograph, videotape or other recorded image or audio produced by a traffic surveillance camera mounted on a school bus for more than 30 days from the date of production unless it is released in accordance with this subsection.

For the purposes of this subsection, "prosecutor" means a person who by virtue of public employment is vested by law with a duty to prosecute offenders for crimes, whether that duty extends to all crimes or is limited to specific crimes.

[PL 2019, c. 318, §1 (NEW).]

**2. Toll enforcement.** The Maine Turnpike Authority may use a photo-monitoring system, as defined by Title 23, section 1980, subsection 2-A, paragraph B, subparagraph (4), for toll enforcement purposes.

[PL 2019, c. 318, §1 (NEW).]

**REVISOR'S NOTE:** §2117. Failure to maintain control of a motor vehicle (As enacted by PL 2009, c. 446, §1 is REALLOCATED TO TITLE 29-A, SECTION 2118)

**SECTION HISTORY**

RR 2009, c. 1, §18 (RAL). PL 2009, c. 223, §1 (NEW). PL 2009, c. 446, §1 (NEW). PL 2019, c. 318, §1 (AMD).

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**Ref. #**  
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19  
(49)



**§2251. Accident reports**

**1. Definition.** As used in this section, "reportable accident" means an accident on a public way or a place where public traffic may reasonably be anticipated, resulting in bodily injury or death to a person or apparent property damage of \$2,000 or more. Apparent property damage under this subsection must be based upon the market value of the necessary repairs and may not be limited to the current value of the vehicle or property.

[PL 2023, c. 27, §1 (AMD).]

**2. Report required.** A reportable accident must be reported immediately by the quickest means of communication to a state police officer, or to the nearest state police field office, or to the sheriff's office, or to a deputy sheriff, within the county in which the accident occurred, or to the office of the police department, or to an officer, of the municipality in which the accident occurred. The accident must be reported by:

A. The operator of an involved vehicle; [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

B. A person acting for the operator; or [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

C. If the operator is unknown, the owner of an involved vehicle having knowledge of the accident. [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

[RR 1995, c. 2, §71 (COR).]

**3. Form.** The Chief of the State Police:

A. Shall prepare and supply forms and approve the format for electronic submission for reports that require sufficiently detailed information to disclose the cause, conditions, persons and vehicles involved, including information to permit the Secretary of State to determine whether the requirement for proof of financial responsibility is inapplicable; [PL 2003, c. 688, Pt. A, §35 (RPR).]

B. Shall receive, tabulate and analyze accident reports; [PL 2003, c. 434, §23 (AMD); PL 2003, c. 434, §37 (AFF).]

B-1. Shall send all accident reports to the Secretary of State; and [PL 2003, c. 434, §23 (NEW); PL 2003, c. 434, §37 (AFF).]

C. May publish statistical information on the number, cause and location of accidents. [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

[PL 2003, c. 688, Pt. A, §35 (AMD).]

**4. Investigation.** A law enforcement officer who investigates a reportable accident shall:

A. Interview participants and witnesses; and [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

B. Within 5 days from the time of notification of the accident, transmit an electronic report or the original written report containing all available information to the Chief of the State Police. [PL 2003, c. 688, Pt. A, §36 (RPR).]

Every reported accident must be promptly investigated.

If the accident results in serious bodily injury or death of any person, the investigation must be conducted by an officer who has met the training standards of a full-time law enforcement officer. A law enforcement officer who investigates an accident involving a bus or truck with a gross vehicle weight rating or a registered weight in excess of 10,000 pounds that results in the death of any person shall request a certified accident reconstructionist and the Bureau of State Police Commercial Vehicle

Enforcement Unit to assist in the investigation of the accident. The Attorney General shall designate an assistant attorney general familiar with federal commercial vehicle laws and regulations to serve as a resource to any district attorney who initiates a prosecution arising from an accident involving a bus or truck with a gross vehicle weight rating or a registered weight in excess of 10,000 pounds that results in the death of any person.

[PL 2003, c. 688, Pt. A, §36 (AMD).]

**5. Forty-eight-hour report.**

[PL 2003, c. 434, §25 (RP); PL 2003, c. 434, §37 (AFF).]

**6. Financial responsibility information.** The owner or operator of a vehicle involved in an accident shall furnish additional relevant information as the Secretary of State requires to determine the applicability of the requirement of proof of financial responsibility.

The Secretary of State may rely on the accuracy of the information until there is reason to believe that the information is erroneous.

[PL 2003, c. 434, §26 (RPR); PL 2003, c. 434, §37 (AFF).]

**7. Report information.** An accident report made by an investigating officer or a report made by an operator as required by subsection 2 is for the purposes of statistical analysis and accident prevention.

A report or statement contained in the accident report, or a report as required by subsection 2, a statement made or testimony taken at a hearing before the Secretary of State held under section 2483, or a decision made as a result of that report, statement or testimony may not be admitted in evidence in any trial, civil or criminal, arising out of the accident.

A report may be admissible in evidence solely to prove compliance with this section.

Notwithstanding subsection 7-A, the Chief of the State Police may disclose the date, time and location of the accident and the names and addresses of operators, owners, injured persons, witnesses and the investigating officer. On written request, the chief may furnish a photocopy of the investigating officer's report at the expense of the person making the request. The cost of furnishing a copy of the report is not subject to the limitations of Title 1, section 408-A.

[PL 2011, c. 662, §18 (AMD).]

**7-A. Accident report database; public dissemination of accident report data.** Data contained in an accident report database maintained, administered or contributed to by the Department of Public Safety, Bureau of State Police must be treated as follows.

A. For purposes of this subsection, the following terms have the following meanings.

- (1) "Data" means information existing in an electronic medium and contained in an accident report database.
- (2) "Nonpersonally identifying accident report data" means any data in an accident report that are not personally identifying accident report data.
- (3) "Personally identifying accident report data" means:
  - (a) An individual's name, residential and post office box mailing address, social security number, date of birth and driver's license number;
  - (b) A vehicle registration plate number;
  - (c) An insurance policy number;
  - (d) Information contained in any free text data field of an accident report; and
  - (e) Any other information contained in a data field of an accident report that may be used to identify a person. [PL 2011, c. 654, §8 (AMD).]

B. Except as provided in paragraph B-1 and Title 16, section 805-A, subsection 1, paragraph F, the Department of Public Safety, Bureau of State Police may not publicly disseminate personally identifying accident report data that are contained in an accident report database maintained, administered or contributed to by the Bureau of State Police. Such data are not public records for the purposes of Title 1, chapter 13. [PL 2023, c. 235, §9 (AMD).]

B-1. The Department of Public Safety, Bureau of State Police may disseminate a vehicle registration plate number contained in an accident report database maintained, administered or contributed to by the Bureau of State Police to a person only if that person provides the Bureau of State Police an affidavit stating that the person will not:

- (1) Use a vehicle registration plate number to identify or contact a person; or
- (2) Disseminate a vehicle registration plate number to another person. [PL 2011, c. 654, §8 (NEW).]

C. The Department of Public Safety, Bureau of State Police may publicly disseminate nonpersonally identifying accident report data that are contained in an accident report database maintained, administered or contributed to by the Bureau of State Police. The cost of furnishing a copy of such data is not subject to the limitations of Title 1, section 408-A. [PL 2011, c. 662, §19 (AMD).]

[PL 2023, c. 235, §9 (AMD).]

**8. Violation.** A person commits a Class E crime if that person:

A. Is required to make an oral or written report and knowingly fails to do so within the time required; [PL 2001, c. 360, §15 (AMD).]

B. Is an operator involved in a reportable accident and knowingly fails to give a correct name and address when requested by an officer at the scene; [PL 2011, c. 654, §9 (AMD).]

C. Is the operator involved in a reportable accident or the owner of a vehicle involved in a reportable accident and knowingly fails to produce the vehicle or, if the vehicle is operational, return it to the scene when requested by the investigating officer; or [PL 2011, c. 654, §9 (AMD).]

D. Obtains a vehicle registration plate number pursuant to subsection 7-A, paragraph B-1 and knowingly uses that vehicle registration plate number to identify or contact a person or knowingly disseminates that vehicle registration plate number to another person. [PL 2011, c. 654, §9 (NEW).]

[PL 2011, c. 654, §9 (AMD).]

**9. Prima facie evidence.** The absence of notice to a law enforcement agency with jurisdiction where the accident occurred is prima facie evidence of failure to report an accident.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**10. Suspension.** The Secretary of State may suspend or revoke the motor vehicle driver's license and certificate of registration of a person who is required to make a report and fails to do so or who fails to provide the information required by the Secretary of State.

[PL 2003, c. 434, §28 (AMD); PL 2003, c. 434, §37 (AFF).]

**11. Exemption.** The operator of a snowmobile or an all-terrain vehicle as defined by Title 12, section 13001, unless the all-terrain vehicle is registered for highway use by the Secretary of State under this Title, is exempt from the reporting requirements of subsection 2.

[PL 2003, c. 614, §9 (AFF); PL 2003, c. 688, Pt. B, §10 (RPR); PL 2003, c. 688, Pt. B, §11 (AFF).]

**12. Vulnerable users.** A law enforcement officer who investigates a reportable accident involving a vulnerable user or an incident resulting in bodily injury or death to a vulnerable user and who has probable cause to believe that a traffic infraction, civil violation or criminal violation is connected to

that accident or incident shall inform a district attorney of relevant jurisdiction about the investigation within 5 days of initiating the investigation. The law enforcement officer shall submit a final accident report to that district attorney including any evidence relevant to the potential prosecution of an alleged criminal violation or civil violation resulting from the investigation as soon as is practicable and no later than 60 days after the accident or incident. A law enforcement officer may submit any additional evidence as soon as it becomes available after the submission of the final accident report. Nothing in this subsection precludes evidence submitted later than 60 days after the accident or incident from being used in the prosecution of a criminal violation or civil violation. Failure of a law enforcement officer to inform a district attorney in accordance with this subsection does not affect any authority of a district attorney to take any action or preclude a private citizen from notifying a district attorney about an accident or incident.

[PL 2021, c. 379, §1 (NEW).]

#### SECTION HISTORY

PL 1993, c. 683, §A2 (NEW). PL 1993, c. 683, §B5 (AFF). RR 1995, c. 2, §71 (COR). PL 1997, c. 172, §1 (AMD). PL 1997, c. 178, §3 (AMD). PL 1999, c. 61, §1 (AMD). PL 2001, c. 360, §15 (AMD). PL 2003, c. 340, §§9,10 (AMD). PL 2003, c. 414, §B46 (AMD). PL 2003, c. 414, §D7 (AFF). PL 2003, c. 434, §§23-28 (AMD). PL 2003, c. 434, §37 (AFF). PL 2003, c. 614, §9 (AFF). PL 2003, c. 688, §§A35,36 (AMD). PL 2003, c. 688, §B10 (AMD). PL 2003, c. 688, §B11 (AFF). PL 2003, c. 709, §4 (AMD). PL 2007, c. 348, §23 (AMD). PL 2011, c. 390, §§1, 2 (AMD). PL 2011, c. 420, Pt. K, §1 (AMD). PL 2011, c. 420, Pt. K, §2 (AFF). PL 2011, c. 654, §§8, 9 (AMD). PL 2011, c. 662, §§18, 19 (AMD). PL 2013, c. 267, Pt. B, §24 (AMD). PL 2021, c. 379, §1 (AMD). PL 2023, c. 27, §1 (AMD). PL 2023, c. 235, §9 (AMD).

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**STATUTE:** 29-A MRSA §2251, sub-§7-A

**AGENCY:** Department of Public Safety

**CONTACT PERSON:** Paul Cavanaugh ([Paul.F.Cavanaugh@maine.gov](mailto:Paul.F.Cavanaugh@maine.gov))

**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 exception is only used for "bulk" requests of data. The individual crash reports are not subject to this exemption, therefore anyone can obtain a crash report. With this law, the exploitation of crash victims are protected, preventing data mining of individuals involved in crashes by not releasing bulk reports/data to companies that in turn exploit or sell that data, which often used to solicit unsought after services. We often release bulk data to data mining companies, but we use this law to allow us to strip out the PII beforehand. We currently have handful of subscribers that obtain all crash report, minus the PII, on a recurring basis. We deny request approximately 6 times a year.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. We support this exception and supported the bill over a decade ago.
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? None

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. The Maine TRCC (Traffic Records Coordinating Committee).
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**Ref. #**  
**(previous ref. #)**

20  
(50)



**§2601. Summons and Complaint**

**1. Form of Uniform Summons and Complaint.** Every law enforcement agency in this State shall use traffic summonses for civil violations defined in this Title and criminal traffic offenses defined in Title 23, section 1980 or this Title in the form known as the Uniform Summons and Complaint, which must be uniform throughout the State and must be issued in books with summonses in no less than quadruplicate and meeting the requirements of this chapter. The Uniform Summons and Complaint must include, at a minimum, the signature of the officer, a brief description of the alleged offense, the time and place of the alleged offense and the time, place and date the person is to appear in court. The Uniform Summons and Complaint must also include a statement that signing the summons does not constitute an admission or plea of guilty and that refusal to sign after having been ordered to do so by a law enforcement officer is a separate Class E crime. A person to whom a Uniform Summons and Complaint is issued or delivered must give a written promise to appear. The form of the Uniform Summons and Complaint must be approved by the Chief Judge of the District Court prior to its use.

[PL 2013, c. 482, §6 (AMD).]

**2. Creation of forms.** The Commissioner of Public Safety is responsible for creating the forms of Uniform Summons and Complaint, subject to the approval of the forms by the Chief Judge of the District Court.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**3. Form of Violation Summons and Complaint.** Every law enforcement agency in this State shall use traffic summonses for traffic infractions in the form known as the Violation Summons and Complaint, which must be uniform throughout the State and must be issued in books with summonses in no less than quadruplicate and meeting the requirements of this chapter. The form must include, at a minimum, the signature of the officer, a brief description of the alleged offense, the time and place of the alleged offense and the date on or before which the person is to file a written answer with the violations bureau. The Violation Summons and Complaint must also include a statement that signing the summons does not constitute an admission or plea of guilty and that refusal to sign after having been ordered to do so by a law enforcement officer is a separate Class E crime. The form of the Violation Summons and Complaint must be approved by the Chief Judge of the District Court prior to its use.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]



**3-A. Electronic Violation Summons and Complaint.** Notwithstanding subsection 3, the Chief Judge of the District Court may approve for use an electronic Violation Summons and Complaint form. The electronic Violation Summons and Complaint form must include, at a minimum, an electronic or digital signature of the officer, a brief description of the alleged offense, the time and place of the alleged offense and the date on or before which the person is to file a written answer with the violations bureau. Personally identifying information that is contained in the electronic citation or the electronic warning database maintained, administered or contributed to by the Department of Public Safety, Bureau of State Police is confidential, except that personally identifying information that is contained in these databases may be shared with another criminal justice agency, delivered to the person under subsection 7 and transmitted to the violations bureau as required by subsection 9. For the purposes of this subsection, "personally identifying information" means an individual's name, residential and post office mailing addresses, date of birth and driver's license number, a vehicle registration plate number and any other information contained in a data field that may be used to identify a person.

[PL 2023, c. 55, §1 (AMD).]

**4. Responsibility for issuance and disposition.** The summons and complaint forms must be printed and distributed as follows.

A. The District Court is responsible for printing all copies of the Violation Summons and Complaint forms. The Department of Public Safety is responsible for printing all copies of the Uniform Summons and Complaint forms and issuing both types to law enforcement agencies or others. [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

B. The chief executive officer of every law enforcement agency or that chief executive officer's designee is responsible for the further issuance of summons and complaint forms to individual law enforcement officers and for the proper disposition of those forms. [PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**5. Illegal disposition.** It is unlawful and official misconduct for any law enforcement officer or other officer or public employee to dispose of a Violation Summons and Complaint or a Uniform Summons and Complaint or any portion of either or of the record of the issuance of a Violation Summons and Complaint or a Uniform Summons and Complaint in a manner other than as required under rules adopted pursuant to this section. Any person who solicits or aids in the disposition or attempted disposition of a Violation Summons and Complaint or a Uniform Summons and Complaint or any portion of either in any unauthorized manner commits a Class E crime.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**6. Uniform Summons and Complaint as summons.** A Uniform Summons and Complaint, when issued or delivered to a person by a law enforcement officer or served on the person in the manner prescribed by rule of the Supreme Judicial Court, acts as a summons to appear in court on the date and time specified in the summons or to otherwise respond in accordance with law on or before the date and time specified in the summons. Any person who fails to appear in court as directed by the summons or to otherwise respond in accordance with law on or before the date and time specified in the summons commits a Class E crime. Upon the person's failure to appear or respond, the court may issue a warrant of arrest. It is an affirmative defense to prosecution under this subsection that the failure to appear or respond resulted from just cause.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**7. Violation Summons and Complaint as summons.** The Violation Summons and Complaint, when issued or delivered to a person by a law enforcement officer or served on the person in the manner prescribed by rule of the Supreme Judicial Court, acts as an order to file written answer to the complaint on or before the date specified in the summons.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**8. When a lawful complaint.** If the Uniform Summons and Complaint is duly sworn to as required by law and otherwise legally sufficient in respect to the form of a complaint and to charging commission of the offense alleged in the summons to have been committed, then the summons when filed with a court having jurisdiction constitutes a lawful complaint for the purpose of the commencement of any prosecution of a civil violation under this Title or a misdemeanor or Class D or Class E crime under Title 23, section 1980 or this Title. When filed with the violations bureau, the Violation Summons and Complaint is considered a lawful complaint for the purpose of the commencement of a traffic infraction proceeding.

[PL 2013, c. 482, §7 (AMD).]

**9. Responsibility of law enforcement officer to file summonses and complaints with District Court.** A law enforcement officer issuing a Violation Summons and Complaint charging the commission of a traffic infraction shall file the original of the Violation Summons and Complaint with the violations bureau within 5 days of the issuance of the Violation Summons and Complaint. A law enforcement officer issuing a Uniform Summons and Complaint that charges the commission of an offense shall file the original of the Uniform Summons and Complaint with the District Court having jurisdiction over the offense or in such other location as instructed by the Chief Judge of the District

Court without undue delay and, in any event, within 5 days after the issuance of the Uniform Summons and Complaint.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

**10. Refusal to sign.** A person who refuses to sign a Uniform Summons and Complaint or a Violation Summons and Complaint after having been ordered to do so by a law enforcement officer commits a Class E crime. A law enforcement officer may not order a person to sign the Uniform Summons and Complaint for a civil violation unless the civil violation is an offense defined in Title 12; Title 28-A, section 2052; or this Title. Notwithstanding any other provision of law, the venue for a violation of this subsection is the same judicial division as for the Uniform Summons and Complaint or Violation Summons and Complaint that the person refuses to sign.

[PL 1997, c. 653, §12 (AMD).]

#### SECTION HISTORY

PL 1993, c. 683, §A2 (NEW). PL 1993, c. 683, §B5 (AFF). PL 1997, c. 653, §12 (AMD). PL 2013, c. 112, §9 (AMD). PL 2013, c. 482, §§6, 7 (AMD). PL 2023, c. 55, §1 (AMD).

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**STATUTE:** 29-A MRSA §2601, sub-§3-A

**AGENCY:** DPS/State Police

**CONTACT PERSON:** Paul Cavanaugh

**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). With this law only being a year old, to my knowledge we have not received any FOAA/FOIA requests for the data contained within the eCitation portal.
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. We support this statute as we worked with Sen. Anne Carney to get the bill introduced to the Judiciary Committee. We also provided supporting testimony. Testimony attached.
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? None that I am aware of.
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. Sen Anne Carney and maybe Maine Prosecutors Assoc.

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

**Ref. #**  
**(previous ref. #)**

21  
(51)



### §503. Personnel records

**1. Confidential records.** The following records are confidential and not open to public inspection. They are not "public records" as defined in Title 1, section 402, subsection 3. These records include:

A. Except as provided in this paragraph, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the county for use in the examination or evaluation of applicants for positions as county employees.

(1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired.

(2) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(3) This paragraph does not preclude union representatives from access to personnel records which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection; [PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD); PL 1989, c. 402, §2 (RPR).]

B. County records containing the following:

(1) Medical information of any kind, including information pertaining to the diagnosis or treatment of mental or emotional disorders;

(2) Performance evaluations and personal references submitted in confidence;

(3) Information pertaining to the creditworthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family;

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this subparagraph, "final written decision" means:

(a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

(b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written

decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and

- (6) Personal information, including that which pertains to the employee's:
  - (a) Age;
  - (b) Ancestry, ethnicity, genetic information, national origin, race or skin color;
  - (c) Marital status;
  - (d) Mental or physical disabilities;
  - (e) Personal contact information, as described in Title 1, section 402, subsection 3, paragraph O;
  - (f) Personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance;
  - (g) Religion;
  - (h) Sex, gender identity or sexual orientation as defined in Title 5, section 4553, subsection 9-C; or
  - (i) Social security number.

Such personal information may be disclosed publicly in aggregate form, unless there is a reasonable possibility that the information would be able to be used, directly or indirectly, to identify any specific employee; and [PL 2023, c. 159, §2 (AMD).]

C. Other information to which access by the general public is prohibited by law. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]  
[PL 2023, c. 159, §2 (AMD).]

**1-A. Investigations of deadly force or physical force by law enforcement officer.** The name of a law enforcement officer is not confidential under subsection 1, paragraph B, subparagraph (5) in cases involving:

- A. The use of deadly force by a law enforcement officer; or [PL 1991, c. 729, §6 (NEW).]
- B. The use of physical force by a law enforcement officer resulting in death or serious bodily injury. [PL 1991, c. 729, §6 (NEW).]

In cases specified in paragraphs A and B, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.

[PL 1991, c. 729, §6 (NEW).]

**1-B. Investigation of allegation of sexual misconduct or sexual harassment by county jail employee.** Notwithstanding subsection 1, paragraph B, subparagraph (5), in the case of an allegation of sexual misconduct or sexual harassment within a county jail or detention facility, a determination that the allegation was substantiated, unsubstantiated or unfounded may be disclosed to the alleged victim. Unless the allegation is determined to be unfounded, the following information may also be shared with the alleged victim:

- A. Whether the individual alleged to have engaged in the sexual misconduct or sexual harassment is still assigned to the same work location where the sexual misconduct or sexual harassment allegedly occurred; [PL 2023, c. 615, §4 (NEW).]

B. Whether the individual under paragraph A is still employed at the county jail or detention facility; [PL 2023, c. 615, §4 (NEW).]

C. Whether the individual under paragraph A has been criminally charged or convicted of a crime arising out of the allegation of sexual misconduct or sexual harassment; and [PL 2023, c. 615, §4 (NEW).]

D. Whether the prosecuting agency declined to seek an indictment or the grand jury declined to indict the individual under paragraph A based on the allegation of sexual misconduct or sexual harassment. [PL 2023, c. 646, Pt. B, §2 (AMD).]

[PL 2023, c. 646, Pt. B, §2 (AMD).]

**2. Employee right to review.** On written request from an employee or former employee, a county official with custody of the records shall provide that employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the county official has a personnel file for that employee. These reviews shall take place during normal office hours at the location where the personnel files are maintained.

A. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits of which the county official has possession. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. The records described in subsection 1, paragraph B, may also be examined by the employee to whom they relate, as provided in this subsection. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

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**3. Constitutional obligations of a prosecutor.** Notwithstanding this section or any other provision of law, this section does not preclude the disclosure of confidential personnel records and the information contained in those records to the Attorney General, a deputy attorney general, an assistant attorney general, a district attorney, a deputy district attorney, an assistant district attorney or the equivalent departments or offices in a federal jurisdiction that are related to the determination of and compliance with the constitutional obligations of the State or the United States to provide discovery to a defendant in a criminal matter. A person or entity participating in good faith disclosure under this subsection or participating in a related proceeding is immune from criminal and civil liability for the act of disclosure or for participating in the proceeding.

[PL 2013, c. 201, §2 (NEW).]

#### SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD). PL 1989, c. 402, §2 (AMD). PL 1991, c. 229, §2 (AMD). PL 1991, c. 729, §6 (AMD). PL 1997, c. 770, §2 (AMD). PL 2013, c. 201, §2 (AMD). PL 2019, c. 451, §2 (AMD). PL 2023, c. 159, §2 (AMD). PL 2023, c. 615, §4 (AMD). PL 2023, c. 646, Pt. B, §2 (AMD).

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**Ref. #**  
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22

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Such personal information may be disclosed publicly in aggregate form, unless there is a reasonable possibility that the information would be able to be used, directly or indirectly, to identify any specific employee; and [PL 2023, c. 159, §2 (AMD).]

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- A. Whether the individual alleged to have engaged in the sexual misconduct or sexual harassment is still assigned to the same work location where the sexual misconduct or sexual harassment allegedly occurred; [PL 2023, c. 615, §4 (NEW).]

B. Whether the individual under paragraph A is still employed at the county jail or detention facility; [PL 2023, c. 615, §4 (NEW).]

C. Whether the individual under paragraph A has been criminally charged or convicted of a crime arising out of the allegation of sexual misconduct or sexual harassment; and [PL 2023, c. 615, §4 (NEW).]

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**3. Constitutional obligations of a prosecutor.** Notwithstanding this section or any other provision of law, this section does not preclude the disclosure of confidential personnel records and the information contained in those records to the Attorney General, a deputy attorney general, an assistant attorney general, a district attorney, a deputy district attorney, an assistant district attorney or the equivalent departments or offices in a federal jurisdiction that are related to the determination of and compliance with the constitutional obligations of the State or the United States to provide discovery to a defendant in a criminal matter. A person or entity participating in good faith disclosure under this subsection or participating in a related proceeding is immune from criminal and civil liability for the act of disclosure or for participating in the proceeding.

[PL 2013, c. 201, §2 (NEW).]

#### SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD). PL 1989, c. 402, §2 (AMD). PL 1991, c. 229, §2 (AMD). PL 1991, c. 729, §6 (AMD). PL 1997, c. 770, §2 (AMD). PL 2013, c. 201, §2 (AMD). PL 2019, c. 451, §2 (AMD). PL 2023, c. 159, §2 (AMD). PL 2023, c. 615, §4 (AMD). PL 2023, c. 646, Pt. B, §2 (AMD).

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**Ref. #**  
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23  
(60)



**§85. Emergency medical services persons**

**1. Basic and advanced skills.** With advice from and in consultation with the Medical Direction and Practices Board, the board may provide, by rule, which skills, techniques and judgments constitute a basic emergency medical treatment.

[PL 2007, c. 274, §11 (AMD).]

**2. Advanced emergency medical treatment.** With the advice and consultation noted in subsection 1, the board may provide, by rule, which advanced skills, techniques and judgments may be supervised by a physician by means of standing orders, by voice radio and by other means. In every case, advanced emergency medical treatment must be given in accordance with protocols adopted by the Medical Direction and Practices Board.

[PL 2023, c. 166, §2 (AMD).]

**3. Minimum requirements for licensing.** In setting rules for the licensure of emergency medical services persons, the board shall ensure that a person is not licensed to care for patients unless that person's qualifications are at least those specified in this subsection. Any person who meets these conditions is considered to have the credentials and skill demonstrations necessary for licensure to provide emergency medical treatment.

A. The person must have completed successfully the training specified in rules adopted by the board pursuant to the Maine Administrative Procedure Act. [PL 1995, c. 161, §5 (AMD).]

B. [PL 2007, c. 274, §12 (RP).]

C. The person must have successfully completed a state cognitive test for basic emergency medical treatment and a board-approved practical evaluation of emergency medical treatment skills. [PL 2011, c. 271, §8 (AMD).]

D. [PL 2001, c. 474, §1 (RP).]

The board shall obtain criminal history record information containing a record of public criminal history record information as defined in Title 16, section 703, subsection 9 for an applicant seeking licensure under this subsection. Information obtained pursuant to this subsection is confidential and may be used only to determine suitability for issuance of a license to provide emergency medical services. The results of criminal history record checks received by the board are for official use only and may not be disseminated outside the board. The applicant for licensure shall pay the expense of obtaining the information required by this subsection.

[PL 2013, c. 267, Pt. B, §25 (AMD).]

**4. Minimum requirements for relicensing.** The board shall set by rule the license and relicensing requirements and the relicensing interval for emergency medical services persons. A person who is duly licensed in Maine as an emergency medical services person must be issued a renewal license if the following requirements are met:

A. The person must have satisfactorily completed relicensure training as defined in the rules; and [PL 1991, c. 742, §3 (NEW).]

B. The person must have satisfactorily demonstrated competence in the skills required for the license level. Skill competence may be satisfied by a combination of run report reviews and continuing education training programs conducted in accordance with the rules or by satisfactorily completing the state cognitive test and a board-approved practical evaluation of emergency medical treatment skills. [PL 2011, c. 271, §9 (AMD).]

If the person is not duly licensed at the time of application, the person must demonstrate skill and knowledge as defined in the rules.

To maintain a valid license, an emergency medical services person must meet the criteria set out in this section. If those criteria are not met, a person does not hold a valid license and must reapply for licensure.

[PL 2011, c. 271, §9 (AMD).]

**5. Ambulance attendants grandfathered.**

[PL 2011, c. 271, §10 (RP).]

**6. Ambulance operator course.** By January 1, 2007, a person whose job description includes operating an ambulance in an emergency mode or transporting a patient must possess within 6 months of being employed, certification of successful completion of a basic ambulance vehicle operator course, or a course that has been approved by the board as an equivalent, in order to operate an ambulance in an emergency mode or to transport a patient. This requirement applies to all paid and volunteer ambulance operators and transporters. This requirement is in addition to vehicle operator requirements of Title 29-A or other law. A person whose job description includes operating an ambulance in an emergency mode or transporting a patient who successfully completes a basic ambulance vehicle operator course or a course that has been approved by the board as an equivalent may apply to the board for reimbursement for the cost of the course.

[PL 2005, c. 664, Pt. O, §1 (AMD).]

**7. Delegation.** This chapter may not be construed to prohibit a person licensed as an emergency medical services person from rendering medical services in a hospital or other health care facility setting if those services are:

A. Rendered in the person's capacity as an employee of the hospital or health care facility; [PL 2021, c. 587, §1 (AMD).]

B. Authorized by the hospital or health care facility; and [PL 2021, c. 587, §1 (AMD).]

C. Delegated in accordance with section 2594-A, section 2594-E, subsection 4, section 3270-A or section 3270-E, subsection 4. [PL 2023, c. 132, §1 (AMD).]

Unless otherwise provided by law, an emergency medical services person licensed under this chapter may not simultaneously act as a licensee under this chapter and an assistant performing medical services delegated by a physician in accordance with section 2594-A or section 3270-A or by a physician assistant in accordance with section 2594-E, subsection 4 or section 3270-E, subsection 4.

[PL 2023, c. 132, §1 (AMD).]

**8. Naloxone hydrochloride or another opioid overdose-reversing medication.** An emergency medical services person licensed under this chapter shall administer and dispense naloxone hydrochloride or another opioid overdose-reversing medication in compliance with protocols and training developed in accordance with this chapter. An opioid overdose-reversing medication referenced in this subsection must be approved by the federal Food and Drug Administration.

[PL 2023, c. 646, Pt. A, §40 (RPR).]

**9. Dogs.** Notwithstanding section 4860, an emergency medical services person licensed under this chapter may provide emergency medical treatment to a law enforcement dog, as defined in Title 14, section 164-B, paragraph B, or to a search and rescue dog, as defined in Title 14, section 164-B, paragraph D, in accordance with protocols adopted by the Medical Direction and Practices Board.

[PL 2023, c. 587, §1 (NEW).]

**SECTION HISTORY**

PL 1981, c. 661, §2 (NEW). PL 1985, c. 730, §§11,16 (AMD). PL 1989, c. 857, §69 (AMD). PL 1991, c. 588, §13 (AMD). PL 1991, c. 613 (AMD). PL 1991, c. 742, §§1-3 (AMD). PL 1993, c. 152, §§1,2 (AMD). PL 1995, c. 161, §§5,6 (AMD). PL 1997, c. 26, §1 (AMD). PL 1997, c. 26, §2 (AFF). PL 1999, c. 182, §8 (AMD). PL 1999, c. 764, §1 (AMD). PL 2001, c. 45, §1

(AMD). PL 2001, c. 229, §3 (AMD). PL 2001, c. 474, §1 (AMD). PL 2001, c. 697, §C1 (AMD). PL 2003, c. 559, §1 (AMD). PL 2005, c. 664, §O1 (AMD). PL 2005, c. 681, §§1,2 (AMD). PL 2007, c. 274, §§11-14 (AMD). PL 2011, c. 271, §§8-10 (AMD). PL 2013, c. 267, Pt. B, §25 (AMD). PL 2019, c. 370, §15 (AMD). PL 2019, c. 609, §1 (AMD). PL 2021, c. 161, §4 (AMD). PL 2021, c. 587, §1 (AMD). PL 2023, c. 92, §1 (AMD). PL 2023, c. 92, §2 (AFF). PL 2023, c. 132, §1 (AMD). PL 2023, c. 161, §5 (AMD). PL 2023, c. 166, §2 (AMD). PL 2023, c. 587, §1 (AMD). PL 2023, c. 646, Pt. A, §40 (AMD). RR 2023, c. 2, Pt. A, §47 (COR).

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**STATUTE:** 32 MRSA §85, sub-§3

**AGENCY:** Department of Public Safety

**CONTACT PERSON:** Paul Cavanaugh

**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).

Maine State Bureau of Identification Criminal History

Approximately 1000 occurrences per year

Not aware of any occurrences of exceptions being used for denial reason

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

Maine EMS supports the continuation of this 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?

There have been no problems

Yes it is clear

Yes the language of the exception 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.

Approximately 1000 licensees per year. Contact information available upon request

And

State Bureau of Identification  
State House Station #42  
Augusta, ME 04333-0042

45 Commerce Drive, Suite 1  
Augusta

Voice (207) 624-7240

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

Criminal History records may be available from the State Bureau of Identification.

**Ref. #**  
**(previous ref. #)**

24  
(61)





**§91-B. Confidentiality exceptions**

\* Ref # 24  
(61)

**1. Confidentiality.** Except as otherwise provided in this chapter, all proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the board and all reports, information and records provided to the committee are confidential and may not be disclosed or obtained by discovery from the committee, the board or its staff. Quality assurance information may be disclosed to a licensee as part of any board-approved educational or corrective process. All complaints and investigative records of the board or any committee or subcommittee of the board are confidential during the pendency of an investigation and may not be disclosed by the committee, the board or its staff. Information or records that identify or permit identification of any patient that appears in any reports, information or records provided to the board or department for the purposes of investigation are confidential and may not be disclosed by the committee, the board or its staff.

\* Ref # 25  
(62)

A. A personal residence address, personal telephone number or personal e-mail address submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as permitted under this section or as otherwise required by law unless the applicant who submitted the information indicated pursuant to section 90-B that the applicant is willing to have the applicant's personal residence address, personal telephone number or personal e-mail address treated as a public record. Personal health information submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as otherwise permitted under this section or otherwise required by law.

The board and its committees and staff may disclose personal health information about and the personal residence address and personal telephone number of a licensee or an applicant for a license under this chapter to a government licensing or disciplinary authority or to a health care provider located within or outside this State that requests the information for the purposes of granting, limiting or denying a license or employment to the applicant or licensee. [PL 2011, c. 271, §19 (NEW).]

\* Ref # 26  
(63)

B. Any materials or information submitted to the board in support of an application that are designated as confidential by any other provision of law remain confidential in the possession of the board. Information in any report or record provided to the board pursuant to this chapter that permits identification of a person receiving emergency medical treatment is confidential. [PL 2011, c. 271, §19 (NEW).]

C. Information provided to the board under section 87-B is confidential if the information identifies or permits the identification of a trauma patient or a member of that patient's family. [PL 2011, c. 271, §19 (NEW).]

\* Ref # 27  
(64)

D. Examination questions used by the board to fulfill the cognitive testing requirements of this chapter are confidential. [PL 2011, c. 271, §19 (NEW).]

\* Ref # 28  
(65)

E. Health care information or records provided to the board under section 88, subsection 2, paragraph K are confidential if the information or records identify or permit the identification of a patient or a member of that patient's family. [PL 2021, c. 15, §2 (NEW).]

F. Health care information or records provided to the board under section 96 are confidential if the information or records identify or permit the identification of a patient who received emergency medical treatment or a member of that patient's family. [PL 2021, c. 15, §3 (NEW).]  
[PL 2021, c. 15, §§2, 3 (AMD).]

**2. Exceptions.** Information designated confidential under subsection 1 becomes a public record or may be released as provided in this subsection.

- A. Confidential information may be released in an adjudicatory hearing or informal conference before the board or in any subsequent formal proceeding to which the confidential information is relevant. [PL 2011, c. 271, §19 (NEW).]
- B. Confidential information may be released in a consent agreement or other written settlement when the confidential information constitutes or pertains to the basis of board action. [PL 2011, c. 271, §19 (NEW).]
- C. Investigative records and complaints become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this paragraph, an investigation is concluded when:
- (1) Notice of an adjudicatory proceeding, as defined under Title 5, chapter 375, subchapter 1, has been issued;
  - (2) A consent agreement has been executed; or
  - (3) A letter of dismissal has been issued or the investigation has otherwise been closed. [PL 2011, c. 271, §19 (NEW).]
- D. During the pendency of an investigation, a complaint or investigative record may be disclosed:
- (1) To Maine Emergency Medical Services employees designated by the director;
  - (2) To designated complaint officers of the board;
  - (3) By a Maine Emergency Medical Services employee or complaint officer designated by the board to the extent considered necessary to facilitate the investigation;
  - (4) To other state or federal agencies when the files contain evidence of possible violations of laws enforced by those agencies;
  - (5) By the director, to the extent the director determines such disclosure necessary to avoid imminent and serious harm. The authority of the director to make such a disclosure may not be delegated;
  - (6) When it is determined, in accordance with rules adopted by the department, that confidentiality is no longer warranted due to general public knowledge of the circumstances surrounding the complaint or investigation and when the investigation would not be prejudiced by the disclosure; or
  - (7) To the person investigated on request of that person. The director may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the director determines that disclosure would prejudice the investigation. The authority of the director to make such a determination may not be delegated. [PL 2011, c. 271, §19 (NEW).]
- E. Data collected by Maine Emergency Medical Services that allows identification of persons receiving emergency medical treatment may be released for purposes of research, regional medical control quality improvement plans, public health surveillance and linkage with patient electronic medical records if the release is approved by the board, the Medical Direction and Practices Board and the director. Information that specifically identifies individuals must be removed from the information disclosed pursuant to this paragraph, unless the board, the Medical Direction and Practices Board and the director determine that the release of such information is necessary for the purposes of the research, regional medical control quality improvement plans, public health surveillance or linkage with patient electronic medical records. [PL 2017, c. 373, §2 (AMD).]
- F. Confidential information may be released in accordance with an order issued on a finding of good cause by a court of competent jurisdiction. [PL 2011, c. 271, §19 (NEW).]

G. Confidential information may be released to the Office of Chief Medical Examiner within the Office of the Attorney General. [PL 2017, c. 475, Pt. A, §51 (AMD).]

H. Confidential information submitted to Maine Emergency Medical Services by any entity must be easily accessible by that entity in accordance with rules adopted by the board that enable compliance by the entity with federal and state laws regarding patient information privacy and access. [PL 2017, c. 373, §3 (NEW).]

[PL 2017, c. 475, Pt. A, §51 (AMD).]

**3. Violation.** A person who intentionally violates this section commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

[PL 2011, c. 271, §19 (NEW).]

#### SECTION HISTORY

PL 2011, c. 271, §19 (NEW). PL 2015, c. 82, §8 (AMD). PL 2017, c. 373, §§2, 3 (AMD). PL 2017, c. 475, Pt. A, §51 (AMD). PL 2021, c. 15, §§2, 3 (AMD).

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**STATUTE: 32 MRSA §91-B, sub-§1**

**AGENCY: Department of Public Safety**

**CONTACT PERSON: Paul Cavanaugh**

**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 section pertains to protected healthcare information and information specified elsewhere as protected or confidential.

This section is evaluated approximately 100 times per year.

Cited 1 last year in denying request for records

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

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

Yes it is clear

Yes the language of the exception 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.

Unable to provide a list as it is federally protected patient information for approximately 300,000 patients per year

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

This is in alignment with federal healthcare data protection standards. Maine EMS is able to often provide aggregated information that meets the requestors needs.

Where it does not there is an approval process for the release of identifiable patient information for specific purposes.

**Ref. #**  
**(previous ref. #)**

25  
(62)



\* §91-B. Confidentiality exceptions

1. **Confidentiality.** Except as otherwise provided in this chapter, all proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the board and all reports, information and records provided to the committee are confidential and may not be disclosed or obtained by discovery from the committee, the board or its staff. Quality assurance information may be disclosed to a licensee as part of any board-approved educational or corrective process. All complaints and investigative records of the board or any committee or subcommittee of the board are confidential during the pendency of an investigation and may not be disclosed by the committee, the board or its staff. Information or records that identify or permit identification of any patient that appears in any reports, information or records provided to the board or department for the purposes of investigation are confidential and may not be disclosed by the committee, the board or its staff.

\* Ref # 24 (b1)

A. A personal residence address, personal telephone number or personal e-mail address submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as permitted under this section or as otherwise required by law unless the applicant who submitted the information indicated pursuant to section 90-B that the applicant is willing to have the applicant's personal residence address, personal telephone number or personal e-mail address treated as a public record. Personal health information submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as otherwise permitted under this section or otherwise required by law.

The board and its committees and staff may disclose personal health information about and the personal residence address and personal telephone number of a licensee or an applicant for a license under this chapter to a government licensing or disciplinary authority or to a health care provider located within or outside this State that requests the information for the purposes of granting, limiting or denying a license or employment to the applicant or licensee. [PL 2011, c. 271, §19 (NEW).]

\* Ref # 25 (b2)

B. Any materials or information submitted to the board in support of an application that are designated as confidential by any other provision of law remain confidential in the possession of the board. Information in any report or record provided to the board pursuant to this chapter that permits identification of a person receiving emergency medical treatment is confidential. [PL 2011, c. 271, §19 (NEW).]

C. Information provided to the board under section 87-B is confidential if the information identifies or permits the identification of a trauma patient or a member of that patient's family. [PL 2011, c. 271, §19 (NEW).]

\* Ref # 26 (b3)

D. Examination questions used by the board to fulfill the cognitive testing requirements of this chapter are confidential. [PL 2011, c. 271, §19 (NEW).]

E. Health care information or records provided to the board under section 88, subsection 2, paragraph K are confidential if the information or records identify or permit the identification of a patient or a member of that patient's family. [PL 2021, c. 15, §2 (NEW).]

\* Ref # 27 (b4)

\* Ref # 28 (b5)

F. Health care information or records provided to the board under section 96 are confidential if the information or records identify or permit the identification of a patient who received emergency medical treatment or a member of that patient's family. [PL 2021, c. 15, §3 (NEW).]  
[PL 2021, c. 15, §§2, 3 (AMD).]

2. **Exceptions.** Information designated confidential under subsection 1 becomes a public record or may be released as provided in this subsection.

- A. Confidential information may be released in an adjudicatory hearing or informal conference before the board or in any subsequent formal proceeding to which the confidential information is relevant. [PL 2011, c. 271, §19 (NEW).]
- B. Confidential information may be released in a consent agreement or other written settlement when the confidential information constitutes or pertains to the basis of board action. [PL 2011, c. 271, §19 (NEW).]
- C. Investigative records and complaints become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this paragraph, an investigation is concluded when:
- (1) Notice of an adjudicatory proceeding, as defined under Title 5, chapter 375, subchapter 1, has been issued;
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- D. During the pendency of an investigation, a complaint or investigative record may be disclosed:
- (1) To Maine Emergency Medical Services employees designated by the director;
  - (2) To designated complaint officers of the board;
  - (3) By a Maine Emergency Medical Services employee or complaint officer designated by the board to the extent considered necessary to facilitate the investigation;
  - (4) To other state or federal agencies when the files contain evidence of possible violations of laws enforced by those agencies;
  - (5) By the director, to the extent the director determines such disclosure necessary to avoid imminent and serious harm. The authority of the director to make such a disclosure may not be delegated;
  - (6) When it is determined, in accordance with rules adopted by the department, that confidentiality is no longer warranted due to general public knowledge of the circumstances surrounding the complaint or investigation and when the investigation would not be prejudiced by the disclosure; or
  - (7) To the person investigated on request of that person. The director may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the director determines that disclosure would prejudice the investigation. The authority of the director to make such a determination may not be delegated. [PL 2011, c. 271, §19 (NEW).]
- E. Data collected by Maine Emergency Medical Services that allows identification of persons receiving emergency medical treatment may be released for purposes of research, regional medical control quality improvement plans, public health surveillance and linkage with patient electronic medical records if the release is approved by the board, the Medical Direction and Practices Board and the director. Information that specifically identifies individuals must be removed from the information disclosed pursuant to this paragraph, unless the board, the Medical Direction and Practices Board and the director determine that the release of such information is necessary for the purposes of the research, regional medical control quality improvement plans, public health surveillance or linkage with patient electronic medical records. [PL 2017, c. 373, §2 (AMD).]
- F. Confidential information may be released in accordance with an order issued on a finding of good cause by a court of competent jurisdiction. [PL 2011, c. 271, §19 (NEW).]

G. Confidential information may be released to the Office of Chief Medical Examiner within the Office of the Attorney General. [PL 2017, c. 475, Pt. A, §51 (AMD).]

H. Confidential information submitted to Maine Emergency Medical Services by any entity must be easily accessible by that entity in accordance with rules adopted by the board that enable compliance by the entity with federal and state laws regarding patient information privacy and access. [PL 2017, c. 373, §3 (NEW).]

[PL 2017, c. 475, Pt. A, §51 (AMD).]

**3. Violation.** A person who intentionally violates this section commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

[PL 2011, c. 271, §19 (NEW).]

#### SECTION HISTORY

PL 2011, c. 271, §19 (NEW). PL 2015, c. 82, §8 (AMD). PL 2017, c. 373, §§2, 3 (AMD). PL 2017, c. 475, Pt. A, §51 (AMD). PL 2021, c. 15, §§2, 3 (AMD).

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**STATUTE: 32 MRSA §91-B, sub-§1, paragraph A**

**AGENCY: Department of Public Safety**

**CONTACT PERSON: Paul Cavanaugh**

**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 section pertains to personal licensee applicant information and criminal history information.

This section is evaluated approximately 200 times per year.

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

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

Yes it is clear

Yes the language of the exception 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.

Unable to provide a list as it is state or federally protected patient information

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

**Ref. #**  
**(previous ref. #)**

26  
(63)





**§91-B. Confidentiality exceptions**

**1. Confidentiality.** Except as otherwise provided in this chapter, all proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the board and all reports, information and records provided to the committee are confidential and may not be disclosed or obtained by discovery from the committee, the board or its staff. Quality assurance information may be disclosed to a licensee as part of any board-approved educational or corrective process. All complaints and investigative records of the board or any committee or subcommittee of the board are confidential during the pendency of an investigation and may not be disclosed by the committee, the board or its staff. Information or records that identify or permit identification of any patient that appears in any reports, information or records provided to the board or department for the purposes of investigation are confidential and may not be disclosed by the committee, the board or its staff.

\* Ref# 24  
(61)

A. A personal residence address, personal telephone number or personal e-mail address submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as permitted under this section or as otherwise required by law unless the applicant who submitted the information indicated pursuant to section 90-B that the applicant is willing to have the applicant's personal residence address, personal telephone number or personal e-mail address treated as a public record. Personal health information submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as otherwise permitted under this section or otherwise required by law.

\* Ref# 25  
(62)

The board and its committees and staff may disclose personal health information about and the personal residence address and personal telephone number of a licensee or an applicant for a license under this chapter to a government licensing or disciplinary authority or to a health care provider located within or outside this State that requests the information for the purposes of granting, limiting or denying a license or employment to the applicant or licensee. [PL 2011, c. 271, §19 (NEW).]

\* Ref# 26  
(63)

B. Any materials or information submitted to the board in support of an application that are designated as confidential by any other provision of law remain confidential in the possession of the board. Information in any report or record provided to the board pursuant to this chapter that permits identification of a person receiving emergency medical treatment is confidential. [PL 2011, c. 271, §19 (NEW).]

C. Information provided to the board under section 87-B is confidential if the information identifies or permits the identification of a trauma patient or a member of that patient's family. [PL 2011, c. 271, §19 (NEW).]

\* Ref# 27  
(64)

D. Examination questions used by the board to fulfill the cognitive testing requirements of this chapter are confidential. [PL 2011, c. 271, §19 (NEW).]

E. Health care information or records provided to the board under section 88, subsection 2, paragraph K are confidential if the information or records identify or permit the identification of a patient or a member of that patient's family. [PL 2021, c. 15, §2 (NEW).]

\* Ref# 28  
(65)

F. Health care information or records provided to the board under section 96 are confidential if the information or records identify or permit the identification of a patient who received emergency medical treatment or a member of that patient's family. [PL 2021, c. 15, §3 (NEW).]

[PL 2021, c. 15, §§2, 3 (AMD).]

**2. Exceptions.** Information designated confidential under subsection 1 becomes a public record or may be released as provided in this subsection.

A. Confidential information may be released in an adjudicatory hearing or informal conference before the board or in any subsequent formal proceeding to which the confidential information is relevant. [PL 2011, c. 271, §19 (NEW).]

B. Confidential information may be released in a consent agreement or other written settlement when the confidential information constitutes or pertains to the basis of board action. [PL 2011, c. 271, §19 (NEW).]

C. Investigative records and complaints become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this paragraph, an investigation is concluded when:

- (1) Notice of an adjudicatory proceeding, as defined under Title 5, chapter 375, subchapter 1, has been issued;
- (2) A consent agreement has been executed; or
- (3) A letter of dismissal has been issued or the investigation has otherwise been closed. [PL 2011, c. 271, §19 (NEW).]

D. During the pendency of an investigation, a complaint or investigative record may be disclosed:

- (1) To Maine Emergency Medical Services employees designated by the director;
- (2) To designated complaint officers of the board;
- (3) By a Maine Emergency Medical Services employee or complaint officer designated by the board to the extent considered necessary to facilitate the investigation;
- (4) To other state or federal agencies when the files contain evidence of possible violations of laws enforced by those agencies;
- (5) By the director, to the extent the director determines such disclosure necessary to avoid imminent and serious harm. The authority of the director to make such a disclosure may not be delegated;
- (6) When it is determined, in accordance with rules adopted by the department, that confidentiality is no longer warranted due to general public knowledge of the circumstances surrounding the complaint or investigation and when the investigation would not be prejudiced by the disclosure; or
- (7) To the person investigated on request of that person. The director may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the director determines that disclosure would prejudice the investigation. The authority of the director to make such a determination may not be delegated. [PL 2011, c. 271, §19 (NEW).]

E. Data collected by Maine Emergency Medical Services that allows identification of persons receiving emergency medical treatment may be released for purposes of research, regional medical control quality improvement plans, public health surveillance and linkage with patient electronic medical records if the release is approved by the board, the Medical Direction and Practices Board and the director. Information that specifically identifies individuals must be removed from the information disclosed pursuant to this paragraph, unless the board, the Medical Direction and Practices Board and the director determine that the release of such information is necessary for the purposes of the research, regional medical control quality improvement plans, public health surveillance or linkage with patient electronic medical records. [PL 2017, c. 373, §2 (AMD).]

F. Confidential information may be released in accordance with an order issued on a finding of good cause by a court of competent jurisdiction. [PL 2011, c. 271, §19 (NEW).]

G. Confidential information may be released to the Office of Chief Medical Examiner within the Office of the Attorney General. [PL 2017, c. 475, Pt. A, §51 (AMD).]

H. Confidential information submitted to Maine Emergency Medical Services by any entity must be easily accessible by that entity in accordance with rules adopted by the board that enable compliance by the entity with federal and state laws regarding patient information privacy and access. [PL 2017, c. 373, §3 (NEW).]

[PL 2017, c. 475, Pt. A, §51 (AMD).]

**3. Violation.** A person who intentionally violates this section commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

[PL 2011, c. 271, §19 (NEW).]

#### SECTION HISTORY

PL 2011, c. 271, §19 (NEW). PL 2015, c. 82, §8 (AMD). PL 2017, c. 373, §§2, 3 (AMD). PL 2017, c. 475, Pt. A, §51 (AMD). PL 2021, c. 15, §§2, 3 (AMD).

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**STATUTE: 32 MRSA §91-B, sub-§1, paragraph B**

**AGENCY: Department of Public Safety**

**CONTACT PERSON: Paul Cavanaugh**

**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).

Application records that are designated as confidential by any other provision of law

Unknown how frequently this occurs

Not aware of any times this was cited as a reason for denial

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

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

Yes it is clear

Yes the language of the exception 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.

EMS licensure applicants

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

Maine EMS does not believe it is appropriate to release information that is defined as confidential by law.

**Ref. #**  
**(previous ref. #)**

27  
(64)





§91-B. Confidentiality exceptions

1. Confidentiality. Except as otherwise provided in this chapter, all proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the board and all reports, information and records provided to the committee are confidential and may not be disclosed or obtained by discovery from the committee, the board or its staff. Quality assurance information may be disclosed to a licensee as part of any board-approved educational or corrective process. All complaints and investigative records of the board or any committee or subcommittee of the board are confidential during the pendency of an investigation and may not be disclosed by the committee, the board or its staff. Information or records that identify or permit identification of any patient that appears in any reports, information or records provided to the board or department for the purposes of investigation are confidential and may not be disclosed by the committee, the board or its staff.

\* Ref # 24  
(61)

A. A personal residence address, personal telephone number or personal e-mail address submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as permitted under this section or as otherwise required by law unless the applicant who submitted the information indicated pursuant to section 90-B that the applicant is willing to have the applicant's personal residence address, personal telephone number or personal e-mail address treated as a public record. Personal health information submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as otherwise permitted under this section or otherwise required by law.

\* Ref # 25  
(62)

The board and its committees and staff may disclose personal health information about and the personal residence address and personal telephone number of a licensee or an applicant for a license under this chapter to a government licensing or disciplinary authority or to a health care provider located within or outside this State that requests the information for the purposes of granting, limiting or denying a license or employment to the applicant or licensee. [PL 2011, c. 271, §19 (NEW).]

\* Ref # 26  
(63)

B. Any materials or information submitted to the board in support of an application that are designated as confidential by any other provision of law remain confidential in the possession of the board. Information in any report or record provided to the board pursuant to this chapter that permits identification of a person receiving emergency medical treatment is confidential. [PL 2011, c. 271, §19 (NEW).]

C. Information provided to the board under section 87-B is confidential if the information identifies or permits the identification of a trauma patient or a member of that patient's family. [PL 2011, c. 271, §19 (NEW).]

\* Ref # 27  
(64)

D. Examination questions used by the board to fulfill the cognitive testing requirements of this chapter are confidential. [PL 2011, c. 271, §19 (NEW).]

E. Health care information or records provided to the board under section 88, subsection 2, paragraph K are confidential if the information or records identify or permit the identification of a patient or a member of that patient's family. [PL 2021, c. 15, §2 (NEW).]

\* Ref # 28  
(65)

F. Health care information or records provided to the board under section 96 are confidential if the information or records identify or permit the identification of a patient who received emergency medical treatment or a member of that patient's family. [PL 2021, c. 15, §3 (NEW).]  
[PL 2021, c. 15, §§2, 3 (AMD).]

2. Exceptions. Information designated confidential under subsection 1 becomes a public record or may be released as provided in this subsection.

- A. Confidential information may be released in an adjudicatory hearing or informal conference before the board or in any subsequent formal proceeding to which the confidential information is relevant. [PL 2011, c. 271, §19 (NEW).]
- B. Confidential information may be released in a consent agreement or other written settlement when the confidential information constitutes or pertains to the basis of board action. [PL 2011, c. 271, §19 (NEW).]
- C. Investigative records and complaints become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this paragraph, an investigation is concluded when:
- (1) Notice of an adjudicatory proceeding, as defined under Title 5, chapter 375, subchapter 1, has been issued;
  - (2) A consent agreement has been executed; or
  - (3) A letter of dismissal has been issued or the investigation has otherwise been closed. [PL 2011, c. 271, §19 (NEW).]
- D. During the pendency of an investigation, a complaint or investigative record may be disclosed:
- (1) To Maine Emergency Medical Services employees designated by the director;
  - (2) To designated complaint officers of the board;
  - (3) By a Maine Emergency Medical Services employee or complaint officer designated by the board to the extent considered necessary to facilitate the investigation;
  - (4) To other state or federal agencies when the files contain evidence of possible violations of laws enforced by those agencies;
  - (5) By the director, to the extent the director determines such disclosure necessary to avoid imminent and serious harm. The authority of the director to make such a disclosure may not be delegated;
  - (6) When it is determined, in accordance with rules adopted by the department, that confidentiality is no longer warranted due to general public knowledge of the circumstances surrounding the complaint or investigation and when the investigation would not be prejudiced by the disclosure; or
  - (7) To the person investigated on request of that person. The director may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the director determines that disclosure would prejudice the investigation. The authority of the director to make such a determination may not be delegated. [PL 2011, c. 271, §19 (NEW).]
- E. Data collected by Maine Emergency Medical Services that allows identification of persons receiving emergency medical treatment may be released for purposes of research, regional medical control quality improvement plans, public health surveillance and linkage with patient electronic medical records if the release is approved by the board, the Medical Direction and Practices Board and the director. Information that specifically identifies individuals must be removed from the information disclosed pursuant to this paragraph, unless the board, the Medical Direction and Practices Board and the director determine that the release of such information is necessary for the purposes of the research, regional medical control quality improvement plans, public health surveillance or linkage with patient electronic medical records. [PL 2017, c. 373, §2 (AMD).]
- F. Confidential information may be released in accordance with an order issued on a finding of good cause by a court of competent jurisdiction. [PL 2011, c. 271, §19 (NEW).]

G. Confidential information may be released to the Office of Chief Medical Examiner within the Office of the Attorney General. [PL 2017, c. 475, Pt. A, §51 (AMD).]

H. Confidential information submitted to Maine Emergency Medical Services by any entity must be easily accessible by that entity in accordance with rules adopted by the board that enable compliance by the entity with federal and state laws regarding patient information privacy and access. [PL 2017, c. 373, §3 (NEW).]

[PL 2017, c. 475, Pt. A, §51 (AMD).]

**3. Violation.** A person who intentionally violates this section commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

[PL 2011, c. 271, §19 (NEW).]

#### SECTION HISTORY

PL 2011, c. 271, §19 (NEW). PL 2015, c. 82, §8 (AMD). PL 2017, c. 373, §§2, 3 (AMD). PL 2017, c. 475, Pt. A, §51 (AMD). PL 2021, c. 15, §§2, 3 (AMD).

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**STATUTE:** 32 MRSA §91-B, sub-§1, paragraph D

**AGENCY:** Department of Public Safety

**CONTACT PERSON:** Paul Cavanaugh

**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).

Licensure Exam Question  
None that we are aware of  
None that we are aware of

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

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?

Not aware of any problems  
Yes  
Yes

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.

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

EMS Licensure applicants

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

**Ref. #**  
**(previous ref. #)**

28  
(65)



\*

**§91-B. Confidentiality exceptions**

\* Ref # 24  
(61)

**1. Confidentiality.** Except as otherwise provided in this chapter, all proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the board and all reports, information and records provided to the committee are confidential and may not be disclosed or obtained by discovery from the committee, the board or its staff. Quality assurance information may be disclosed to a licensee as part of any board-approved educational or corrective process. All complaints and investigative records of the board or any committee or subcommittee of the board are confidential during the pendency of an investigation and may not be disclosed by the committee, the board or its staff. Information or records that identify or permit identification of any patient that appears in any reports, information or records provided to the board or department for the purposes of investigation are confidential and may not be disclosed by the committee, the board or its staff.

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(62)

A. A personal residence address, personal telephone number or personal e-mail address submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as permitted under this section or as otherwise required by law unless the applicant who submitted the information indicated pursuant to section 90-B that the applicant is willing to have the applicant's personal residence address, personal telephone number or personal e-mail address treated as a public record. Personal health information submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as otherwise permitted under this section or otherwise required by law.

The board and its committees and staff may disclose personal health information about and the personal residence address and personal telephone number of a licensee or an applicant for a license under this chapter to a government licensing or disciplinary authority or to a health care provider located within or outside this State that requests the information for the purposes of granting, limiting or denying a license or employment to the applicant or licensee. [PL 2011, c. 271, §19 (NEW).]

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\* Ref # 27  
(64)

D. Examination questions used by the board to fulfill the cognitive testing requirements of this chapter are confidential. [PL 2011, c. 271, §19 (NEW).]

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F. Health care information or records provided to the board under section 96 are confidential if the information or records identify or permit the identification of a patient who received emergency medical treatment or a member of that patient's family. [PL 2021, c. 15, §3 (NEW).]  
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**2. Exceptions.** Information designated confidential under subsection 1 becomes a public record or may be released as provided in this subsection.

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G. Confidential information may be released to the Office of Chief Medical Examiner within the Office of the Attorney General. [PL 2017, c. 475, Pt. A, §51 (AMD).]

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[PL 2017, c. 475, Pt. A, §51 (AMD).]

**3. Violation.** A person who intentionally violates this section commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

[PL 2011, c. 271, §19 (NEW).]

#### SECTION HISTORY

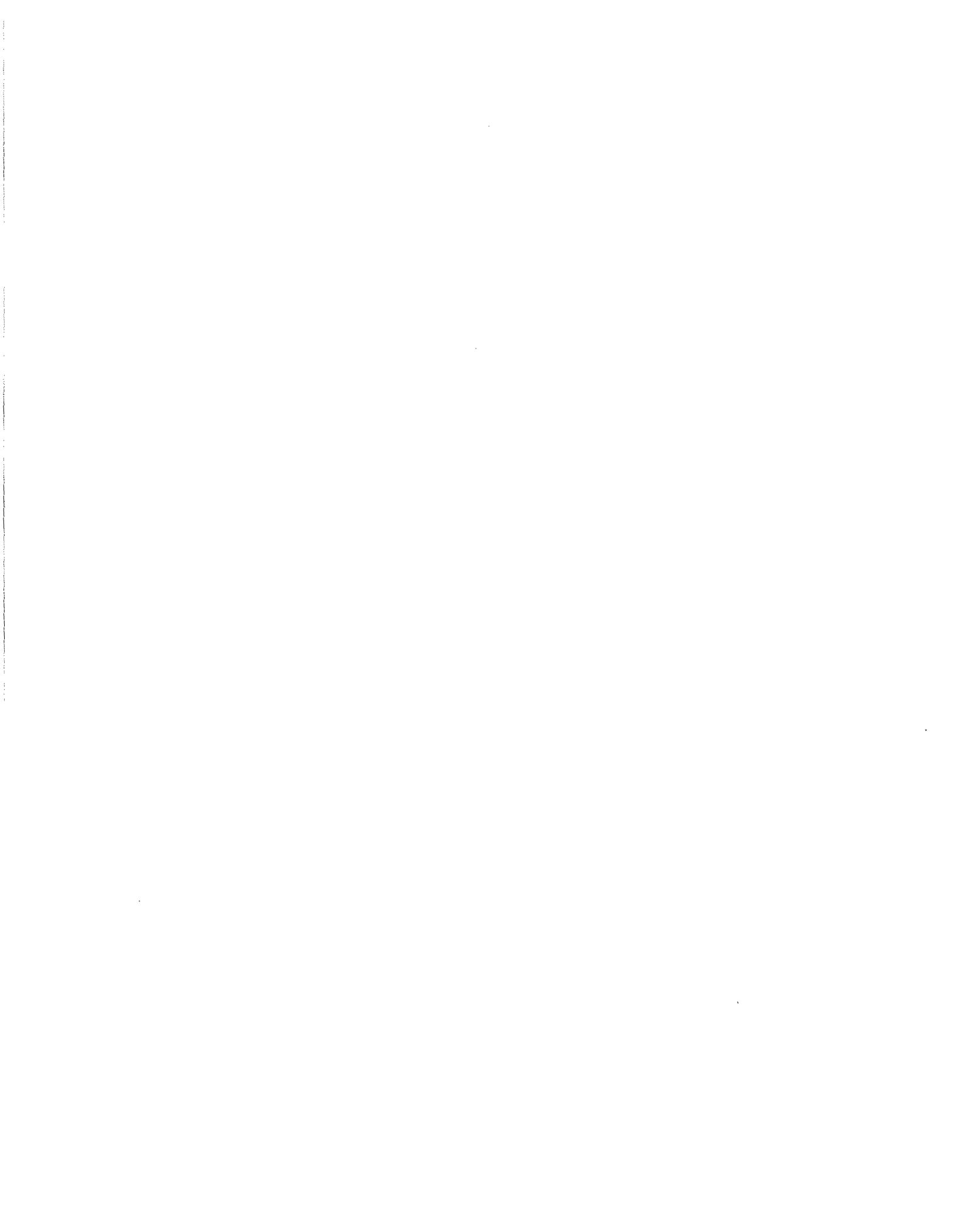
PL 2011, c. 271, §19 (NEW). PL 2015, c. 82, §8 (AMD). PL 2017, c. 373, §§2, 3 (AMD). PL 2017, c. 475, Pt. A, §51 (AMD). PL 2021, c. 15, §§2, 3 (AMD).

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**STATUTE: 32 MRSA §91-B, sub-§1, paragraphs E and F**

**AGENCY: Department of Public Safety**

**CONTACT PERSON: Paul Cavanaugh**

**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 section pertains to protected healthcare information.

This section is evaluated approximately 100 times per year.

Cited 1 last year in denying request for records

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

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

Yes it is clear

Yes the language of the exception 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.

Unable to provide a list as it is federally protected patient information for approximately 300,000 patients per year.

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

This is in alignment with federal healthcare data protection standards. Maine EMS is able to often provide aggregated information that meets the requestors needs. Where it does not there is an approval process for the release of identifiable patient information for specific purposes.

**Ref. #**  
**(previous ref. #)**

29  
(66)



**§1092-A. Confidentiality**

**(REPEALED)**

**SECTION HISTORY**

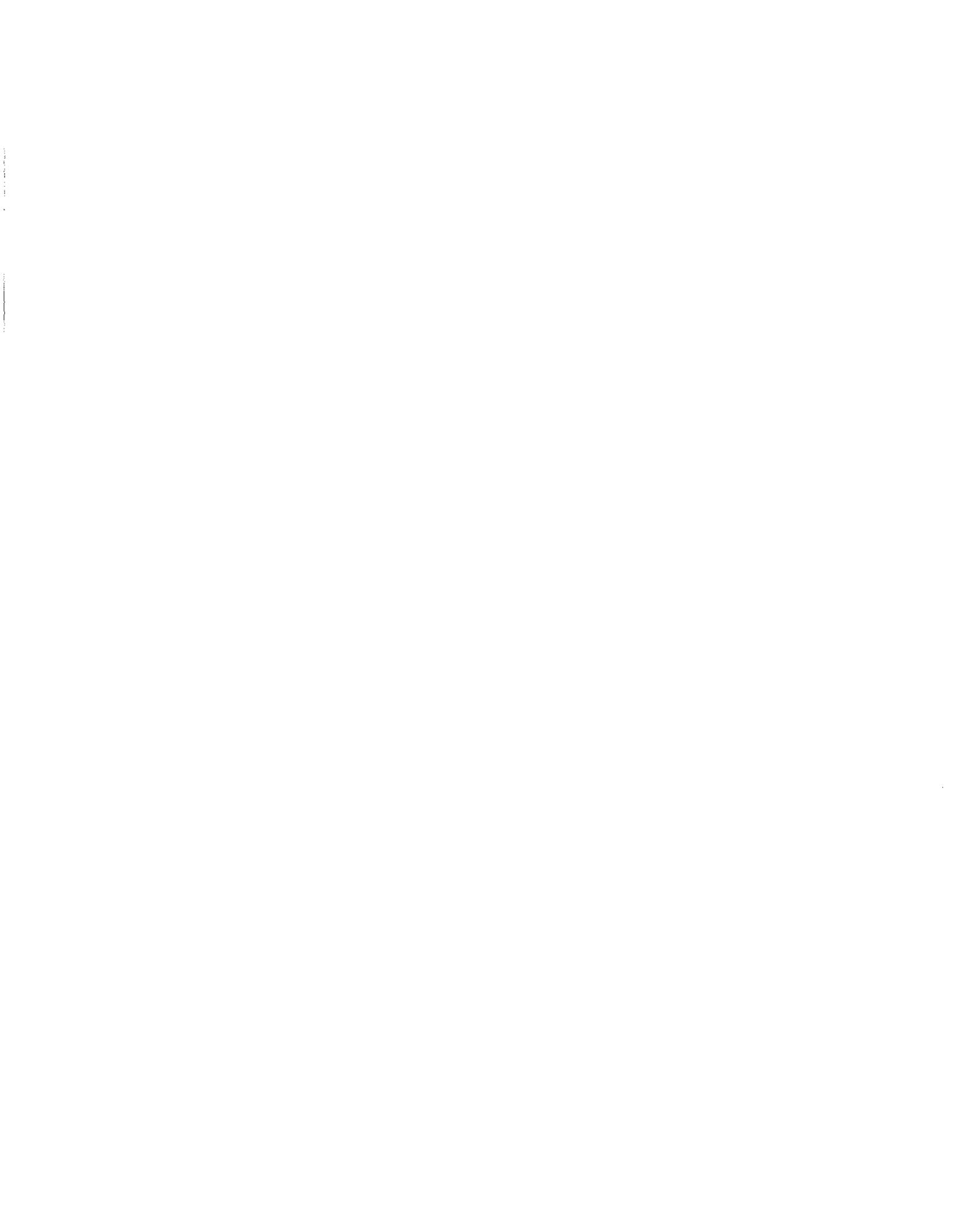
PL 1981, c. 211, §2 (NEW). PL 1985, c. 296, §2 (AMD). PL 1993, c. 600, §§A74,75 (AMD). PL 1995, c. 65, §A131 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 2001, c. 345, §8 (AMD). PL 2015, c. 429, §17 (RP).

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**N/A**



**Ref. #**  
**(previous ref. #)**

30  
(70)



**§2111. Criminal history record information; fees**

**1. Background check.** The board shall request a background check for each person who submits an application for initial licensure or licensure by endorsement under this chapter, including an application for multistate licensure under subchapter 2-A. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation. The following provisions apply.

A. The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8. [PL 2017, c. 258, Pt. B, §5 (NEW).]

B. The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information. [PL 2017, c. 258, Pt. B, §5 (NEW).]

C. An applicant shall submit to having fingerprints taken. The State Police, upon payment of a fee established by the board by rule by the applicant, shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety. [PL 2017, c. 258, Pt. B, §5 (NEW).]

D. The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709. [PL 2017, c. 258, Pt. B, §5 (NEW).]

E. State and federal criminal history record information may be used by the board for the purpose of screening each applicant. A board action against an applicant under this subsection is subject to the provisions of Title 5, chapter 341. [PL 2017, c. 258, Pt. B, §5 (NEW).]



F. Information obtained pursuant to this subsection is confidential. The results of background checks received by the board are for official use only and may not be disseminated to the Interstate Commission of Nurse Licensure Compact Administrators established in section 2177 or to any other person or entity. [PL 2017, c. 258, Pt. B, §5 (NEW).]

G. An applicant whose license has expired and who has not applied for renewal may request in writing that the State Bureau of Identification remove the applicant's fingerprints from the bureau's fingerprint file. In response to a written request, the bureau shall remove the applicant's fingerprints from the fingerprint file and provide written confirmation of that removal. [PL 2017, c. 258, Pt. B, §5 (NEW).]

[PL 2017, c. 258, Pt. B, §5 (NEW).]

**2. Rules.** The board, following consultation with the State Bureau of Identification, shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2017, c. 258, Pt. B, §5 (NEW).]

**SECTION HISTORY**

PL 2017, c. 258, Pt. B, §5 (NEW).

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**STATUTE: 32 MRSA §2111, sub-§1, paragraph F**

**AGENCY: Maine State Board of Nursing**

**CONTACT PERSON: Kim Esquibel**

**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).

Description of records: CHRI

The board requests a background check for each person who submits an application for initial licensure or licensure by endorsement, including an application for multistate licensure under subchapter 2-A. (approximately 5000/year).

CBC information obtained by the Board on an applicant is confidential under State and federal law. The results of CBC checks are confidential and are never disseminated to the Interstate Commission of Nurse Licensure Compact Administrators or to any other person or entity.

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

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? Yes. Is the language of the exception sufficiently clear in describing the records that are covered? Yes

4. Does your agency recommend changes to this exception? No

**Reference #70**

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.

**Ref. #**  
**(previous ref. #)**

31  
(71)



**§2571-A. Background check for expedited licensure through the Interstate Medical Licensure Compact**

**1. Background check.** The board shall request a background check for an individual licensed under this chapter who applies for an expedited license under section 18506. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.

A. The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8. [PL 2017, c. 253, §5 (NEW).]

B. The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information. [PL 2017, c. 253, §5 (NEW).]

C. An applicant shall submit to having fingerprints taken. The State Police, upon payment by the applicant, shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety. [PL 2017, c. 253, §5 (NEW).]

D. The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709. [PL 2017, c. 253, §5 (NEW).]

E. State and federal criminal history record information of an applicant may be used by the board for the purpose of screening that applicant. [PL 2017, c. 253, §5 (NEW).]



F. Information obtained pursuant to this subsection is confidential. The results of background checks received by the board are for official use only and may not be disseminated to the Interstate Medical Licensure Compact Commission, established in section 18512, or to any other person or entity. [PL 2017, c. 253, §5 (NEW).]

G. An individual whose expedited licensure through the Interstate Medical Licensure Compact under chapter 145 has expired and who has not applied for renewal may request in writing that the State Bureau of Identification remove the individual's fingerprints from the bureau's fingerprint file. In response to a written request, the bureau shall remove the individual's fingerprints from the fingerprint file and provide written confirmation of that removal. [PL 2017, c. 253, §5 (NEW).]  
[PL 2017, c. 253, §5 (NEW).]

**2. Rules.** The board, following consultation with the State Bureau of Identification, shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.  
[PL 2017, c. 253, §5 (NEW).]

**SECTION HISTORY**

PL 2017, c. 253, §5 (NEW).

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10.8



**Ref. #**  
**(previous ref. #)**

32  
(72)



**§2599. Records of proceedings of hospital medical staff review committees confidential**

All proceedings and records of proceedings concerning medical staff reviews and hospital reviews conducted by committees of physicians and other health care personnel on behalf of hospitals located within the State, when these reviews are required by state or federal law or regulations or as a condition of accreditation by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association Committee on Hospital Accreditation are confidential and are exempt from discovery without a showing of good cause. [PL 1993, c. 600, Pt. A, §192 (AMD).]

Provision of information protected by this section to the board pursuant to Title 24, section 2506 does not waive or otherwise affect the confidentiality of the records or the exemption from discovery provided by this section for any other purpose. [PL 1997, c. 271, §6 (NEW).]

**SECTION HISTORY**

PL 1975, c. 137, §1 (NEW). PL 1993, c. 600, §A192 (AMD). PL 1997, c. 271, §6 (AMD).

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**Ref. #**  
**(previous ref. #)**

33  
(73)



**§2600-A. Confidentiality of personal information of applicant or licensee**

An applicant or licensee shall provide the board with a current professional address and telephone number, which will be their public contact address, and a personal residence address and telephone number. An applicant's or licensee's personal residence address and telephone number is confidential information and may not be disclosed except as permitted by this section or as required by law, unless the personal residence address and telephone number have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted by this section or as required by law. The personal health information and personal residence address and telephone number may be provided to other governmental licensing or disciplinary authorities or to any health care providers located within or outside this State that are concerned with granting, limiting or denying a physician's employment or privileges. [PL 2001, c. 214, §1 (NEW).]

**SECTION HISTORY**

PL 2001, c. 214, §1 (NEW).

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**Ref. #**  
**(previous ref. #)**

34  
(74)



**§2600-E. Inspection or copying of record; procedure**

**1. Request for record; redaction.** When the board receives a request to inspect or copy all or part of the record of an applicant or licensee, the board shall redact information that is not public before making the record available for inspection or copying.

[PL 2019, c. 499, §2 (NEW).]

**2. Notice and opportunity to review.** When the board acknowledges a request to inspect or copy an applicant's or a licensee's record as required by Title 1, section 408-A, subsection 3, the board shall send a notice to the applicant or licensee at the applicant's or licensee's last address on file with the board explaining that the request has been made and that the applicant or licensee may review the redacted record before it is made available for inspection or copying. The acknowledgment to the requester must include a description of the review process provided to the applicant or licensee pursuant to this section, including the fact that all or part of the record may be withheld if the board finds that disclosure of all or part of the redacted record creates a potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party. The applicant or licensee has 10 business days from the date the board sends the notice to request the opportunity to review the redacted record. If the applicant or licensee so requests, the board shall send a copy of the redacted record to the applicant or licensee for review. The board shall make the redacted record available to the requester for inspection or copying 10 business days after sending the redacted record to the applicant or licensee for review unless the board receives a petition from the applicant or licensee under subsection 4.

[PL 2019, c. 499, §2 (NEW).]

**3. Reasonable costs.** Reasonable costs related to the review of a record by the applicant or licensee are considered part of the board's costs to make the redacted record available for inspection or copying under subsection 2 and may be charged to the requester.

[PL 2019, c. 499, §2 (NEW).]

**4. Action based on personal safety.** An applicant or licensee may petition the board to withhold the release of all or part of a record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the record is disclosed to the public. The applicant or licensee must petition the board to withhold all or part of the record within 10 business days after the board sends the applicant or licensee the redacted record. The petition must include an explanation of the potential safety risks and a list of items requested to be withheld. Within 60 days of receiving the petition, the board shall notify the applicant or licensee of its decision on the petition. If the applicant or licensee disagrees with the board's decision, the applicant or licensee may file a petition in Superior Court to enjoin the release of the record under subsection 5.

[PL 2019, c. 499, §2 (NEW).]

**5. Injunction based on personal safety.** An applicant or licensee may bring an action in Superior Court to enjoin the board from releasing all or part of a record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the record is disclosed to the public. The applicant or licensee must file the action within 10 business days after the board notifies the applicant or licensee under subsection 4 that the board will release all or part of the redacted record to the requester. The applicant or licensee shall immediately provide written notice to the board that the action has been filed, and the board may not make the record available for inspection or copying until the action is resolved.

[PL 2019, c. 499, §2 (NEW).]

**6. Hearing.** The hearing on an action filed under subsection 5 may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[PL 2019, c. 499, §2 (NEW).]

**7. Application.** This section does not apply to requests for records from other governmental licensing or disciplinary authorities or from any health care providers located within or outside this

State that are concerned with granting, limiting or denying an applicant's or licensee's employment or privileges.

[PL 2019, c. 499, §2 (NEW).]

#### SECTION HISTORY

PL 2019, c. 499, §2 (NEW).

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**Ref. #**  
**(previous ref. #)**

35  
(80)



**§6080. Confidentiality**

Information confidentiality and disclosure is governed by this section. [PL 2023, c. 662, §2 (NEW).]

**1. Confidentiality and prohibited disclosure.** Except as otherwise provided in subsection 2, all information or reports obtained by the administrator from an applicant for a license, licensee or authorized delegate and all information contained in or related to an examination, investigation, operating report or condition report prepared by, on behalf of or for the use of the administrator, or financial statements, balance sheets or authorized delegate information, are confidential and are not subject to disclosure under Title 1, chapter 13.

[PL 2023, c. 662, §2 (NEW).]

**2. Authorized disclosure.** The administrator may disclose information not otherwise subject to disclosure under subsection 1 to representatives of state or federal agencies who certify in a record that they will maintain the confidentiality of the information or if the administrator finds that the release is reasonably necessary for the protection and interest of the public.

[PL 2023, c. 662, §2 (NEW).]

**3. Licensees.** This section does not prohibit the administrator from disclosing to the public a list of all licensees or the aggregated financial or transactional data concerning those licensees.

[PL 2023, c. 662, §2 (NEW).]

**4. Public information.** Information contained in the records of the bureau that is not confidential and may be made available to the public either on the bureau's publicly accessible website, upon receipt by the bureau of a written request, or in NMLS includes:

A. The name, business address, telephone number and unique identifier of a licensee; [PL 2023, c. 662, §2 (NEW).]

B. The business address of a licensee's registered agent for service; [PL 2023, c. 662, §2 (NEW).]

C. The name, business address and telephone number of each authorized delegate; [PL 2023, c. 662, §2 (NEW).]

D. The terms of or a copy of a bond filed by a licensee, as long as confidential information, including but not limited to prices and fees for that bond, is redacted; [PL 2023, c. 662, §2 (NEW).]

E. Copies of nonconfidential final orders of the bureau relating to a violation of this Act or rules implementing this Act; and [PL 2023, c. 662, §2 (NEW).]

F. Imposition of an administrative fine or penalty under this Act. [PL 2023, c. 662, §2 (NEW).]  
[PL 2023, c. 662, §2 (NEW).]

**SECTION HISTORY**

PL 2023, c. 662, §2 (NEW).

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**Ref. #**  
**(previous ref. #)**

36  
(81)



**§6115. Confidentiality of data submitted to the administrator**

**(REPEALED)**

**SECTION HISTORY**

PL 1997, c. 155, §A2 (NEW). PL 2023, c. 662, §4 (RP).

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**N/A**



**Ref. #**  
**(previous ref. #)**

37  
(95)



**§16808. Records**

A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to the Department of Health and Human Services and to a law enforcement agency as part of a referral to the department or to a law enforcement agency or upon request of the department or a law enforcement agency pursuant to an investigation. The records may include historical records and records relating to recent transactions that may constitute financial exploitation of an eligible adult. All records made available to agencies under this section are not public records for purposes of Title 1, chapter 13, subchapter 1. Nothing in this section limits or otherwise impedes the authority of the administrator to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law. [PL 2019, c. 17, §1 (NEW).]

**SECTION HISTORY**

PL 2019, c. 17, §1 (NEW).

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**STATUTE: 32 MRSA §16808**

**AGENCY: Department of Health and Human Services**

**CONTACT PERSON: FOARequests.DHHS@maine.gov; Dayna Collins**

**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).

A: Our department does not have experience in implementing 32 MRSA §16808. When we receive a request for Adult Protective Service information, we respond with a denial citing 22 M.R.S. §3474, (3)(B), which applies to all individuals.

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

A: The Department supports the continuation of this exemption; we feel like it is valuable to have.

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?

A: The Department does not have experience applying this exemption.

4. Does your agency recommend changes to this exception?  
A: No changes are recommended 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.  
A: No further information.
  
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.  
A: No further information.