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Twentieth Annual Report of the Right to Know Advisory Committee

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Twentieth Annual Report of the Right to Know Advisory Committee

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EXECUTIVE SUMMARY

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

As in previous annual reports, this report includes a brief summary of the legislative actions taken in response to the Advisory Committee's January 2025 recommendations and a summary of relevant Maine court decisions from 2025 related to the freedom of access laws. This report also summarizes several topics discussed by the Advisory Committee that did not result in a recommendation or further action.

For its twentieth annual report, the Advisory Committee makes the following recommendations.

- ❑ **Amend certain provisions of law in Titles 25, 26, 27, 28-B, 29-A, and 32 relating to previously enacted public record exceptions.**

- ❑ **Should the Judiciary Committee move forward in implementing a public records exception to make confidential the identities of railroad employees who are involved in an accident, the Committee should consider narrowly tailoring the exception to apply to personally identifiable information.**

- ❑ **Continue examination of the exception found at 1 MRS §402, sub-§3, ¶H, which provides that medical records and reports of municipal ambulance and rescue units and other emergency medical service units are confidential.**

- ❑ **Continue discussions regarding public employee disciplinary records by looking specifically at the interaction between tiered systems of record retention; defining different levels of discipline in terms of severity; and examining whether consistency among definitions should be established at the entity level, at the statutory level, or at the state agency level.**

- ❑ **Amend Title 20-A, section 13025 to require a school entity to notify the Department of Education immediately if a credential holder who is facing allegations that are the subject of, or would have triggered a covered investigation, leaves the school entity's employment for any reason prior to the conclusion of the covered investigation.**

- ❑ **Request that the Maine School Management Association work with school districts to encourage the adoption of a question in their hiring forms asking if a potential employee has ever resigned over allegations of misconduct or an investigation into misconduct from a previous employer.**

- ❑ **Request that the Maine Municipal Association, Maine County Commissioners Association and Maine School Management Association distribute surveys regarding use of technology, including artificial intelligence, in responding to FOAA requests, and that the Maine School Management Association include in that distribution district technology directors. Survey results will be compiled by committee staff in advance of next year's convening of the Advisory Committee.**

- ❑ **Continue the Technology Subcommittee in the 21st Right to Know Advisory Committee in 2026 to monitor any actions taken to advance the recommendations of the Maine Artificial Intelligence Task Force report and to monitor the rapid development of artificial intelligence (AI), particularly in its use by public entities and the intersection of AI and FOAA. Arrange a presentation, during the 21st Right to Know Advisory Committee, in which a vendor provides overview of the technology available to states for public records, exploring how other states use technology, including but not limited to AI, to assist in retaining, searching and distributing public records (e.g., Indiana).**

- ❑ **Continue to examine the adoption of language relating to executive sessions and the confidentiality of information discussed at executive sessions. Request feedback from the Education and State and Local Government joint standing committees.**

- ❑ **Prior to the convening of the 21st Right to Know Advisory Committee, research whether the Advisory Committee is authorized by statute to recommend that the Judiciary Committee amend the statutes governing access to court records in child protection cases**.

- ❑ **Request information from police chiefs regarding possible amendment of 1 MRSA §412, sub-§4 to require Chiefs of Police to complete FOAA training, for consideration by the Advisory Committee next year.**

- ❑ **Continue the Burdensome FOAA Requests Subcommittee in the 21st Right to Know Advisory Committee in 2026, continue discussions regarding the adoption of a FOAA request mediation process, and, during the period prior to the convening of the 21st Advisory Committee, direct staff and a designated member of the Committee to consult with the Public Access Ombudsman regarding a mediation process.**

In 2026, the Right to Know Advisory Committee will continue to provide assistance to the Joint Standing Committee on Judiciary relating to proposed legislation affecting public access. The Advisory Committee looks forward to another year of activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations in this report.

I. INTRODUCTION

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

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

The Right to Know Advisory Committee currently has 18 members. One member resigned in November 2025 and was replaced in December 2025, and one seat remains unfilled. The chair of the Advisory Committee is elected by the members. Current Advisory Committee members are:

Sen. Anne Carney, Chair	*Senate member of Judiciary Committee, appointed by the President of the Senate*
Rep. Rachel Henderson	*House member of Judiciary Committee, appointed by the Speaker of the House*
Amy Beveridge	*Representing broadcasting interests, appointed by the President of the Senate*
Jonathan Bolton	*Attorney General's designee*
Justin Chenette	*Representing the public, appointed by the President of the Senate*
Lynda Clancy	*Representing newspaper and other press interests, appointed by the President of the Senate*
Linda Cohen	*Representing municipal interests, appointed by the Governor*
Julie Finn	*Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court*
Betsy Fitzgerald	*Representing county or regional interests, appointed by the President of the Senate*
Jen Lancaster	*Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House*
Brian MacMaster	*Representing law enforcement interests, appointed by the President of the Senate (resigned November 2025)*
Kevin Martin	*Representing state government interests, appointed by the Governor*

Judy Meyer	*Representing newspaper publishers, appointed by the Speaker of the House*
Jason Moen	*Representing law enforcement interests, appointed by the President of the Senate (appointed December 2025 and did not participate in the work of the 2025 Advisory Committee)*
Tim Moore	*Representing broadcasting interests, appointed by the Speaker of the House*
Kim Monaghan	*Representing the public, appointed by the Speaker of the House*
Cheryl Saniuk-Heinig	*A member with legal or professional expertise in the field of data and personal privacy, appointed by the Governor*
Connor P. Schratz	*Representing school interests, appointed by the Governor*
Eric Stout	*A member with broad experience in and understanding of issues and costs in multiple areas of information technology, appointed by the Governor*

The complete membership list of the Advisory Committee is included in Appendix B.

By law, the Advisory Committee must meet at least four times per year. During 2025, the Advisory Committee met four times: on September 26, October 15, October 29 and November 19. In accordance with the Advisory Committee's remote participation policy, Advisory Committee meetings were conducted in a hybrid manner. Meetings were remotely accessible to the public through the Legislature's website.

II. COMMITTEE DUTIES

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

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

- Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;

- Examining inconsistencies in statutory language and proposing clarifying standard language; and

- Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected, and public records remain accessible to the public.

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

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

III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES

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

In *United States v. Willie Banks*[1], the defendant was indicted for being a felon in possession of a firearm. The defense sought to suppress evidence obtained pursuant to a search warrant executed at the home of the defendant. The defense argued that the prosecution had committed a *Brady/Giglio* violation by failing to provide materials during discovery regarding disciplinary actions taken against the police detective involved in the search. The defense obtained the materials via a separate Freedom of Access Act request.

In its decision, the court emphasized the prosecutor's duty to disclose material, referred to as *Giglio* material, that was capable of impeaching government witnesses. The court noted that in the case at hand, there was no evidence to suggest that the prosecution has reviewed the detective's personnel file, despite a request by the defense for disciplinary records. The court, citing the 1963 Supreme Court case *Brady v. Maryland*[2] and the 1995 Supreme Court case of

[1] United States of America v. Willie Banks, No. 2:24-cr-00068-LEW, 2025 WL 642246 (D. Me. Feb. 27, 2025).
[2] Brady v. Maryland, 373 U.S. 83 (1963).

Kyles v. Whitley[3], further stated that prosecutors have the obligation to discover favorable evidence known to others acting on behalf of the government's case. The court declined to suppress the evidence found during the search because the defense had ultimately obtained the personnel files through FOAA. However, the court remained critical of the government's inaction, writing "the Government should not feel vindicated by the fortuity of a no-harm-no-foul ruling, I remain concerned with the Government's approach to its *Brady* and *Giglio* obligations in this case, which may fall just short of slipshod but which can comfortably be described as blasé."[4]

IV. ACTIONS RELATED TO COMMITTEE RECOMMENDATIONS CONTAINED IN NINETEENTH ANNUAL REPORT

The Advisory Committee made the following recommendations in its Nineteenth Annual Report, issued in January 2025. The actions taken in 2025 as a result of those recommendations are summarized below.

Recommendation:	**Action:**
Review Titles 25, 26, 27, 30-A and 32 relating to previously enacted public records exceptions	LD 1828, "An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Public Records Exceptions," was passed in the first session (P.L. 2025 Ch. 111). The bill implemented the recommended legislation drafted by the RTKAC.
Recommendation:	**Action:**
Establish a new public records exception in Title 5 related to information received by the Permanent Commission on the Status of Racial, Indigenous and Tribal Populations	LD 1826, "An Act to Protect the Confidentiality of Personally Identifiable Information in Records of the Permanent Commission on the Status of Racial, Indigenous and Tribal Populations," was passed in the first session (P.L. 2025 Ch. 188). The bill implemented this recommendation.
Recommendation:	**Action:**
Review provisions of law relating to state, county and municipal employee personnel records and consider whether establishing consistency among provisions is appropriate	The RTKAC recommended review of Title 5, section 7070, relating to state personnel records; Title 30-A, section 503, relating to county personnel records; and Title 30-A, section 2702, relating to municipal personnel records.

[3] Kyles v. Whitley, 514 U.S. 419 (1995).
[4] United States of America v. Willie Banks, No. 2:24-cr-00068-LEW, 2025 WL 642246, at *4 (D. Me. Feb. 27, 2025).

Recommendation: Review Title 1, section 402, subsection 3, paragraph H, relating to records held by emergency medical service units	**Action:** The RTKAC continues to review Title 1, section 402, subsection 3, paragraph H.
Recommendation: Request that the State Archivist convene a working group with stakeholders to make recommendations regarding a tiered system of retention for public employee disciplinary records	**Action:** The State Archivist convened the requested working group and issued the report included as Appendix C.
Recommendation: Request that the Criminal Law Advisory Commission provide guidance related to records that could be used to impeach a witness in a criminal case (so-called Brady/Giglio materials)	**Action:** Staff sent a letter to CLAC in February of 2025.
Recommendation: Amend Title 1, section 408-A, subsections 4 and 4-A, to provide an agency additional time to file an action for protection from a request for inspection or copying that is unduly burdensome or oppressive and specify that a series of requests may be denied as unduly burdensome or oppressive	**Action:** LD 1827, "An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Public Records Requests," was passed in the first session (P.L. 2025 Ch. 175). The bill implemented this recommendation.
Recommendation: Continue discussions regarding resources available to entities responsible for responding to FOAA requests and solicit information regarding the resources these entities have for responding to FOAA requests	**Action:** Staff sent surveys regarding resource availability to the Maine Municipal Association and Maine County Commissioners Association requesting information regarding resources available to local entities to respond to FOAA requests. The Advisory Committee reviewed the responses received and used this information to inform further inquiries.
Recommendation: Continue discussions regarding the development of a formal FOAA dispute mediation process	**Action:** The RTKAC continued discussions regarding a formal FOAA dispute mediation process.
Recommendation: Amend Title 1, section 412, subsection 4, to include all boards established under Title 5, chapter 379 in the FOAA training requirement and amend Title 1, section 413 to require those boards to designate an existing employee as its public access officer to serve	**Action:** LD 1813, "An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning State Boards and Commissions," was passed in the first session (P.L. 2025 Ch. 187). The bill implemented this recommendation.

as the contact person with regard to requests for public records	
Recommendation: Request information from the Maine Municipal Association and the Maine County Commissioners Association regarding FOAA and record retention trainings each association provides to its members including the number of trainings and information regarding types and numbers of attendees, for consideration by the Advisory Committee next year	**Action:** Staff sent requests for information to the Maine Municipal Association and the Maine County Commissioners Association regarding FOAA and record retention trainings and reviewed responses.
Recommendation: Amend Title 1, section 408-A, subsection 4, to require that a written notice of a denial of a request for inspection or copying of a record provided by a body, agency or an official include a citation to the statutory authority used for the basis of the denial	**Action:** LD 1797, "An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Denials of Public Records Requests," was passed in the first session (P.L. 2025 Ch. 186). The bill implemented this recommendation.
Recommendation: Send a letter to the Maine Press Association and the Maine Association of Broadcasters asking that these groups coordinate with the Maine Chiefs of Police Association, the Maine Sheriffs Association, Maine State Police and the Maine Office of the Attorney General to convene a meeting to share information among stakeholders regarding the pressures and constraints experienced by both members of the media and law enforcement when reporting on or releasing information related to public safety incidents and ongoing criminal investigations	**Action:** A meeting was convened by the Maine Press Association and the Maine Association of Broadcasters. See Appendix D for a summary of the meeting.

V. COMMITTEE PROCESS

In 2025, the Advisory Committee formed four subcommittees to assist in its work: the Public Records Exceptions Subcommittee, the Public Employee Disciplinary Records Subcommittee, the Technology Subcommittee and the Burdensome FOAA Requests Subcommittee. Each subcommittee discussed its assigned topics and issues thoroughly and determined whether to make recommendations for consideration by the full Advisory Committee. More information on the subcommittee activities, including meeting agenda and materials, can be found on the Advisory Committee's webpage at http://legislature.maine.gov/right-to-know-advisory-committee.

The deliberations of each subcommittee are summarized below. Part VI of this report contains the specific recommendations from the subcommittees that were adopted by the full Advisory

Committee. Unless otherwise noted, subcommittee recommendations were unanimously approved by those subcommittee members present.

Public Records Exceptions Subcommittee

The Public Records Exceptions Subcommittee was chaired by Cheryl Saniuk-Heinig. Jonathan Bolton, Lynda Clancy and Julia Finn served as members of the Subcommittee. The Subcommittee met on October 15, November 5 and November 13. On November 19, the Subcommittee made its report and recommendations to the Advisory Committee.

The charge of the Public Records Exceptions Subcommittee is to review and evaluate public records exceptions as required by the Advisory Committee pursuant to 1 MRSA, section 433, subsection 2-A. The law requires the Advisory Committee to review all public records exceptions in Titles 25, 26, 27, 28-A, 29-A, 30, 30-A, 31 and 32 by 2027. Last year, the Subcommittee reviewed the majority of the exceptions in these titles; the Subcommittee completed its work this fall.

- *Review of exceptions in Titles 25-32*

Last year, the Subcommittee contacted state agencies and other appropriate entities for information, comments and suggestions with respect to the administration of the public records exceptions subject to review. This year, staff followed up with agencies that had failed to respond to last year's questionnaires. Staff were able to gather responses from nearly every entity contacted. Subcommittee members reviewed the agency responses to the questionnaires and also had available a chart that included the following information: the statutory citation for each exception; links to the statutory language; the agency that is responsible for administering each exception; and each agency's or entity's recommendation whether to continue, amend or repeal the exception.

A total of 37 exceptions were identified for review: two exceptions in Title 25; one exception in Title 26, one exception in Title 27, three exceptions in Title 28-B, 13 exceptions in Title 29-A, two exceptions in Title 30-A, and 15 exceptions in Title 32. Of these, the Subcommittee recommended that there be no changes to 23 exceptions. The Subcommittee recommended changes be made to 11 exceptions. Three exceptions previously identified for review had been subsequently repealed.

The Advisory Committee unanimously approved the recommendations of the Subcommittee, which are further discussed in Part VI of this report.

See the proposed amendments to existing exceptions in Appendix E. See also the list of existing exceptions recommended to continue without change in Appendix F.

- *Review of issues raised by LD 1824*

The Judiciary Committee considered LD 1824, *An Act to Prohibit the Public Release of Information Regarding a Railroad Fatality* during the first session of the 132nd Legislature. The bill excluded from the definition of "public record" reports from a law enforcement agency regarding an accident resulting in a fatality involving a railroad or railroad line and all records of communication between the law enforcement agency and a railroad company employee involved in that accident. The Judiciary Committee, concerned that the public records exception was too expansive, voted "ought not to pass" and the bill failed. However, the Judiciary Committee sent a letter to the Advisory Committee asking that the Advisory Committee review LD 1824 and provide feedback to the Judiciary Committee, considering particularly the statutory balancing test required by Title 1, section 434 of the Maine Revised Statutes.

The Subcommittee reviewed LD 1824. Seeking to clarify the intention behind the bill, members invited Mr. Daniel Cadogan of Massachusetts AFL-CIO to speak to the Subcommittee. Mr. Cadogan was involved in the drafting of the bill and was able to confirm the intention of the bill to Subcommittee members. He explained that the purpose of the bill was to make confidential information identifying railroad employees who are involved in a rail accident, during the course of an investigation. He noted that there have been a number of incidents in New England where train operators have been harassed by members of the public following an accident, despite the employee having no fault in the accident.

Members of the Subcommittee agreed that as drafted, the language appears more broadly written than is necessary to meet its purpose. The bill appears to make confidential the entirety of law enforcement reports regarding a railroad accident during an investigation, not just information identifying railroad employees. The Subcommittee expressed reservations about an industry-specific exception. The Subcommittee also noted that there is existing statute at Title 16, chapter 9, the Intelligence and Investigative Record Information Act, that allows law enforcement entities to keep confidential investigation records under a number of circumstances, including to prevent an "unwarranted invasion of personal privacy." The Subcommittee believes that this statute could be applied to protect the identities of railroad workers involved in an accident, at least regarding law enforcement records. The Subcommittee also noted that this existing statute is modeled after an exception in the federal Freedom of Information Act and that there is a body of caselaw interpreting Maine's exception and its federal counterpart, and that, therefore, any changes should be considered carefully. The Subcommittee recommended to the Advisory Committee that should the Judiciary Committee choose to move forward with legislation similar to LD 1824, it carefully consider the necessity of such legislation in the state. The consideration should include examining whether railroad employees have been subject to harassment following an accident in the state, and simple, narrowly tailored language that makes confidential personally identifiable information contained in law enforcement records and/or the accident reports required by Title 23, section 7311 of the Maine Revised Statutes.

- *Review of exception at 1 MRS §434, sub-§3, ¶H*

The Advisory Committee was asked by the Maine Municipal Association (MMA) to review the exception at Title 1, section 402, subsection 3, paragraph H. This exception makes confidential

"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." MMA requested clarification as to whether the exception makes confidential the entire report of an EMS run, or only personally identifiable medical information.

The Subcommittee invited Scott Susi, Fire Chief at the City of Sanford, to help the Subcommittee understand the types of records that appear in reports of ambulance runs. Chief Susi explained that EMS is bound by the same confidentiality protections under federal and state law that apply to other types of medical care. The Subcommittee discussed whether the exception was necessary given existing law at Title 22, section 1711-C, which aligns and references federal requirements.

The Subcommittee researched the legislative history of the exception and found that the language predates state law regarding the treatment of confidential health information, which appears at 22 MRS §1711-C. The Subcommittee considered recommending that the exception be amended by adding a cross reference to Title 22, section 1711-C. At the same time, the Subcommittee wanted to further understand what is included in EMS reports, and whether information is included in those reports that is not otherwise considered confidential. The Subcommittee ultimately decided to recommend contacting Maine EMS, the Fire Marshal's Office and the Fire Chief's Association for feedback prior to next interim.

Public Employee Disciplinary Records Subcommittee

The Public Employee Disciplinary Records Subcommittee was chaired by Representative Rachel Henderson. Senator Anne Carney, Julie Finn, Kevin Martin, Judy Meyer, Cheryl Saniuk-Heinig, Connor Schratz and Eric Stout served as members of the Subcommittee.[5] The Subcommittee met three times: on October 22, November 6 and November 17. On November 19, the Subcommittee made its report and recommendations to the Advisory Committee.

Recommendations from the 2024 Advisory Committee

The Subcommittee was formed to continue the work of the 2024 Public Employee Disciplinary Records Subcommittee. This year, the Subcommittee focused on three specific recommendations from the 2024 Advisory Committee report. First, the 2024 Advisory Committee recommended that the State Archivist convene a working group in 2025 to develop recommendations for a tiered system of retention of public employee disciplinary records based on the "seriousness" of the misconduct. In response to this recommendation, the State Archivist worked in partnership with the New England First Amendment Coalition to convene a working group on June 12, 2025 and produced a report for the 2025 Advisory Committee's review. A copy of this report is included in Appendix C.

The Subcommittee began by reviewing the report of the Working Group. The report provided a summary of the Working Group's discussions, organized by arguments for and against a tiered

[5] Brian MacMaster attended the Subcommittee's first meeting. He resigned from the Right to Know Advisory Committee prior to the Subcommittee's second meeting.

system of retention for public employee disciplinary records as well as general considerations related to a tiered system of retention. The Working Group also issued three recommendations, including first, further consideration of the development of a tiered retention system. The Working Group did not explicitly endorse a two-tiered retention metric but built consensus around a system that would direct certain records to be considered public in perpetuity and others to be considered public for a period of five years. Second, the Working Group recommended the development of consistent guidelines for public employees, stating that it is of critical importance to clearly and consistently define key terms, such as "discipline," "suspension," and "final agency action." Third, the Working Group recommended better guidance for public employees on the implications that a tiered system of retention may have on collective bargaining agreements, with participants raising a concern that a tiered retention system could conflict with negotiated retention schedules. As a result, the Working Group recommended that any proposed system must be explicit in addressing possible conflicts with collective bargaining agreements. A copy of a summary document outlining the discussion and recommendations of the Working Group is included in Appendix G.

Second, the 2024 Advisory Committee submitted a request for additional guidance from the Criminal Law Advisory Commission (CLAC) related to records that could be used to impeach a witness in a criminal case (specifically *Brady/Giglio* materials). The 2024 Advisory Committee sent a letter to CLAC asking the Commission to develop guidance regarding the types of public employee disciplinary records that could be used to impeach a witness in a criminal case and to make recommendations for the appropriate period of retention for such materials. The 2024 Advisory Committee asked the Commission to share any guidance and recommendations developed with the Judiciary Committee and the Advisory Committee. A copy of the letter sent to CLAC on February 7, 2025 is included in Appendix H.

The Subcommittee learned that CLAC looked at this matter briefly during the first legislative session in response to the 2024 Advisory Committee's letter but did not develop any guidance at that time, concluding that the matter is largely outside of the Commission's purview. In response to a follow up inquiry to CLAC on the status of any guidance, CLAC offered to revisit the initial request at its November 2025 meeting to confirm whether the Commission would be able to offer any guidance. In addition, the Subcommittee learned from Mr. MacMaster that LD 1671, *An Act to Establish Disclosure Requirements Regarding Law Enforcement Officer Credibility Information*, will be considered in the Second Regular Session of the 132nd Legislature. LD 1671, sponsored by Representative Adam Lee, would establish uniformity around what conduct needs to be reported to prosecutors that may implicate *Brady/Giglio* materials. Therefore, the Subcommittee expressed an interest in revisiting this topic again next year when the Subcommittee can engage in a meaningful conversation following the outcome of the Legislature's consideration of LD 1671 in the Second Regular Session and review any guidance that may be submitted by CLAC following their November 2025 meeting.

Lastly, the Subcommittee reviewed the 2024 Advisory Committee's recommendation to examine provisions of law relating to state, county and municipal employee personnel records to consider whether establishing consistency among provisions is appropriate. The 2024 Advisory Committee recommended that, in 2025, the Advisory Committee review Title 5, section 7070, relating to state personnel records; Title 30-A, section 503, relating to county personnel records;

and Title 30-A, section 2702, relating to municipal personnel records. The recommendation stipulated that such review should include a full review of the legislative histories of each statute and consideration of whether legislative action is appropriate to create consistency between the provisions. The Subcommittee reviewed the legislative history of each statutory provision identified and reviewed the changes enacted in PL 2023, c. 159 which added language in the state and county personnel records statutes to align with the language found in the municipal personnel statute. The law now requires that a final written decision imposing disciplinary action must state the conduct or other facts based on which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action.

Requests for Consideration for the 2025 Advisory Committee

The 2025 Advisory Committee also received two communications concerning public employee disciplinary records. The first was a letter dated June 18, 2025 from the Joint Standing Committee on the Judiciary. The Judiciary Committee requested that the 2025 Advisory Committee examine the proposals outlined in LD 1484, *An Act Related to Public Access of Records of Certain Disciplinary Actions of Public Employees*. Under current law, complaints and accusations of misconduct involving state, county and municipal employees are confidential unless and until discipline is imposed, at which time the final written decision becomes a public record.[6] LD 1484 proposed that a final written decision imposing discipline would only be publicly accessible if the discipline "is of a nature that imposes or results in financial disadvantage, including, but not limited to, termination, demotion or suspension without pay." The letter explained that, given the complex and competing considerations presented during the consideration of this bill, the Judiciary Committee voted that LD 1484 ought not to pass and requested that the Right to Know Advisory Committee consider the bill's proposal as it continues to examine the issues surrounding public access to public employee disciplinary records in 2025. A copy of this letter is included in Appendix I.

The second communication was a letter dated September 25, 2025 from Senator Peggy Rotundo. Senator Rotundo asked the Advisory Committee to consider how educators and schools share information about educator investigations related to sexual misconduct, including investigations that are never completed. The letter described a situation in which a constituent who personally experienced sexual harassment in the past by an individual learned that this individual now works at her child's school, and that the individual had also departed previous employment amidst a separate investigation into misconduct. Senator Rotundo explained in her letter that, while there are existing statutory safeguards governing educator misconduct, some school employees subject to investigation have avoided notice, moving from one school district to another prior to the completion of an investigation. Senator Rotundo offered a list of potential policy changes that she hoped the Advisory Committee would consider, including legislative proposals designed to address this issue, and requested that the Advisory Committee make recommendations to strengthen processes and safeguards to ensure that school employers, school employees and the Department of Education are working together to ensure the safety of Maine students. A copy of this letter is included in Appendix J.

[6] 5 M.R.S. §7070(2)(E); 30-A M.R.S. §503(1)(8), §2702(1)(8).

The Subcommittee reviewed the policy proposals outlined in Senator Rotundo's letter as well as the existing statute governing investigations into the conduct of credentialed educational personnel in Title 20-A, section 13025. The Subcommittee noted that one suggested proposal in the letter that would require schools to begin and complete misconduct investigations even if the educator leaves their employment with the school could present due process consideration regarding the fact-finding that would need to take place if a determination regarding an employee's conduct after their departure would affect the standing of the credential that educator holds. Subcommittee members determined that it would be important to hear from representatives from the Department of Education regarding the current implementation of Title 20-A, section 13025 to help inform this discussion. Additionally, Subcommittee members recalled learning about a policy put in place recently by the Maine State Police requiring the completion of all internal misconduct investigations even after an employee has departed from their employment with Maine State Police. The Subcommittee decided to invite representatives from the Department of Education and the Maine State Police to help inform their discussion of this issue.

Public Employee Investigations

The Subcommittee invited Lt. Col. Brian Scott with the Maine State Police to provide background on the State Police's policy of completing all internal misconduct investigations even after an employee's departure from employment with the Maine State Police. Lt. Col. Scott explained that the policy was first implemented in April of 2022 when he assumed his current role with the State Police. He explained that Lieutenant Colonels with the State Police hold discretion in enforcing the State Police's policies and overseeing their Office of Professional Standards, which is where all complaints against sworn members are investigated. Lt. Col. Scott noted that external stakeholders had raised concerns over the issue of police misconduct investigations that went uncompleted because the officer placed under investigation either retired or resigned. Lt. Col. Scott further explained that, when there are no findings from an investigation, there may not be a report made to the Criminal Justice Academy, which oversees the licensure and certification of all police officers in the State. Consequently, he explained, this could have allowed individuals in these situations to leave employment with the Maine State Police and work for another police agency. Lt. Col. Scott shared that the State Police has been successful in concluding the small number of investigations involving an officer who left employment with the State Police while under investigation.

Lt. Col. Scott also noted that the State Police has consistently considered issues of constitutional law and federal law when it comes to due process in such cases. He explained that, under Title 5 of the Maine Revised Statues, section 7070, the State Police is given an opportunity to come up with a "final written decision," which is the final administrative decision of the agency. This final written decision outlines the disciplinary action to be taken. He noted that when an officer has departed, the State Police is unable to impose the discipline that was proposed but the agency can uphold the determination reached following investigation. The State Police refers to their Collective Bargaining Agreement with the Maine State Troopers Association for the definition of discipline which defines discipline as a corrective memo, written reprimand, suspension, demotion or termination. Upholding the final written decision becomes the final agency action. If the final agency action for a sustained complaint for an employee who is retired or resigned

imposes any level of discipline, that action becomes a public record and it can be released upon request. Lt. Col. Scott further explained that, depending on what the findings are and what the level of misconduct is, the State Police has an obligation to report that finding to the Maine Criminal Justice Academy and they may or may not, depending on their procedure and complaint review committee, revoke an officer's certifications.

Echoing ongoing considerations of the Subcommittee, Lt. Col. Scott reflected that consistency is an important concern when discussing issues concerning public access to public employee disciplinary records and defining terms like "discipline" and "final agency action" are especially important in conversations that consider a two-tier system. In response to inquiries from the Subcommittee on whether there could be ways to frame the process of completing investigations in statutory language, Lt. Col. Scott cautioned that, if this approach is taken, it may be necessary to add "good faith" language to provide for situations where an agency may not have the ability to complete an investigation to the point of conclusion.

Following Lt. Col. Scott's presentation, the Subcommittee asked Michael Perry, Director of Higher Education and Educator Support Services for the Maine Department of Education, and Courtney Belolan, Director of Policy and Government Affairs, to provide additional information on the current implementation of the provisions in Title 20-A, section 13025 governing educator investigations of credentialed educators. Director Perry explained the certification team primarily addresses the matters that are most relevant to the Subcommittee's concerns. The certification team reviews the applications of individuals seeking certification or recertification in Maine schools. Director Perry noted that part of the certification team's role is to clear all school employees, whether they are credentialed employees or in a support staff position, by completing a criminal history record check at the point of application or application renewal. The team also handles concerns about an already credentialed educator and manages the Department's process for determining if a credential action is required. Director Perry noted that the credential actions available to the Department are outlined in State Board of Education Rule Chapter 115, Part 1, Section 7.

Director Perry explained that pursuant to Title 20-A, section 13025, if a school entity investigates an employee and the investigation either results in an employment action or the employee leaves before the investigation concludes, the school entity is required to notify the Department. In such situations, the Department requests all materials related to the investigation from the school. If the Department determines that there is a possible credential action to be taken, the Department reaches out to the educator in question and other stakeholders as part of their process. If the Department decides to take a credential action, as outlined in Title 20-A, section 13025, subsection 4, paragraph A, the Department immediately notifies the school district – or another school district if the employee is employed by another school district – of the determined credential action. School districts are required to report staffing and staffing changes throughout the year to the Department and the Department regularly contacts superintendents if any of their staff are found to be on a violations list or if they are not in good standing with their criminal history records check. Director Perry concluded that the Department has not experienced any willful noncompliance from schools with the requirements established in Title 20-A, section 13025. Additionally, Director Perry noted that the Department of Education is a member of National Association for State Directors of Teacher Education and

Certification (NASDTEC). NASDTEC has a clearing house that captures information on educators that might not appear in a criminal history record check and the Department can use the NASDTEC clearing house to see if an educator has any concerning past behaviors that would not appear on a criminal history record check.

Subcommittee Discussion and Recommendations

Following the information presented, the Subcommittee considered how other public entities may handle employee misconduct. The Subcommittee identified seven stakeholders they wished to hear from before formulating any recommendations for consideration. These seven stakeholders included (1) the Maine Chiefs of Police Association, (2) the Maine Sheriffs Association, (3) the Maine County Commissioners Association, (4) the Maine Municipal Association, (5) the Maine Service Employees Association, (6) the Maine School Management Association and (7) the Maine Education Association. The Subcommittee ultimately developed three questions for consideration and asked for written responses from the identified stakeholders to be submitted for consideration by the Subcommittee's final meeting. A copy of the questions sent to the identified stakeholders is included in Appendix K.

At the Subcommittee's final meeting, members reviewed the written responses received from the Maine School Management Association, the Maine Education Association and the Maine Sheriffs Association which facilitated the collection of responses from nine individual Sheriffs. Copies of the responses submitted to the Subcommittee is included in Appendices L and M. Subcommittee members noted that there appeared to be a lack of consensus among respondents and reflected that more time may be needed to hear from the respondents who were unable to submit a response within the timeframe provided this year. The Maine Municipal Association offered to bring the Subcommittee's questions to their Legislative Policy Committee for review and consideration in January 2026. The Subcommittee expressed agreement in accepting Maine Municipal Association's office to provide feedback following their January policy committee meeting and in revisiting this topic again next year when more feedback can be collected.

Members noted that, although there appeared to be a lack of consensus among respondents, two specific suggestions were presented to the Subcommittee for consideration by the Maine School Management Association. First, the Maine School Management Association suggested a statutory change to Title 20-A, section 13025. The Association suggested amending the statute to require a school entity to notify the Department immediately if a credential holder who is facing allegations that *could be* the subject of a covered investigation leaves the school entity's employment for any reason prior to the conclusion of the covered investigation. The Association noted in their response that they understood, based on Senator Rotundo's letter, that if a credential holder leaves employment with their district before an investigation begins, the existing process in Title 20-A, section 13025 may not be sufficient. The Subcommittee agreed that the suggested statutory change seemed to directly address the primary concern that Senator Rotundo raised in her letter. As a result, the Subcommittee unanimously recommended the suggested statutory change. The Advisory Committee's recommendation related to this issue is discussed in Part VI of this report. The proposed draft legislation is included in Appendix N.

The Subcommittee also considered a second comment from the Maine School Management Association: many districts already include a question on their hiring forms asking if a potential employee has ever resigned or otherwise left employment over allegations of or an investigation into misconduct from a previous employer. One such example from a school district hiring form that the Maine School Management Association provided was, "*Have you ever failed to be rehired, been asked to resign a position, resigned to avoid termination or investigation, or been terminated from employment? If yes, please explain.*" The Association offered to work with the Right to Know Advisory Committee and school districts to encourage the adoption of a question that asks about past allegations or investigations into misconduct from a former employer in school district hiring forms. The Subcommittee felt this suggestion helped to further the charge given to the Subcommittee this year to consider ways to strengthen processes and safeguards to ensure that school employers, school employees and the Department are working together to protect the safety of Maine students. The Subcommittee unanimously recommended sending a letter to the Maine School Management Association to formally accept their offer to work with school districts to adopt language on their hiring forms that asks if a potential employee has ever resigned over allegations of misconduct or an investigation into misconduct from a previous employer. The Advisory Committee's recommendation related to this issue is discussed in Part VI of this report. A copy of the letter to the Maine School Management Association is included in Appendix O.

The Subcommittee also reflected on recurring themes and ongoing issues revisited by the Subcommittee this year, including concerns around public access to public employee disciplinary records, the development of tiers for the retention of disciplinary records, and exploring opportunities for uniformity in defining key terms; members expressed agreement that these issues warrant further review and consideration next year. Subcommittee members reflected that efforts to examine these issues to date have focused primarily on developing or establishing appropriate terminology. The Subcommittee discussed that future consideration of this topic could also include an examination of how other states define different levels of discipline and what mechanisms could be in place among state agencies to develop uniformity in a definition for serious discipline. The Subcommittee unanimously recommended that, in 2026, the Right to Know Advisory Committee continue a discussion on the topic of public access to public employee disciplinary records by examining the issue from a structural perspective rather than focus on the development of specific language. This new framework may instead allow the Advisory Committee to examine the interaction between tiered systems of record retention, defining different levels of discipline in terms of severity and examining whether consistency among definitions should be established at the entity level, at the statutory level or at the state agency level. The Advisory Committee's recommendation related to this issue is discussed in Part VI of this report.

Technology Subcommittee

The Technology Subcommittee was chaired by Amy Beveridge. Jonathan Bolton, Lynda Clancy and Eric Stout served as members of the Subcommittee. The Subcommittee met three times: on October 14, October 27 and October 10. On November 19, the Subcommittee made its report and recommendations to the Advisory Committee.

The Subcommittee was formed to discuss how technology is currently used to respond to FOAA requests and whether technology may increase efficiency and reduce burden on agencies fulfilling FOAA requests. The Subcommittee was also formed to begin a discussion on emergent issues in technology, artificial intelligence (AI), and how these new technologies may affect public access requests.

The Subcommittee began by hosting Sam Foster of Tyler Maine, the State's branch of Tyler Technologies, to learn more about InforME. InforME is the network manager contracted by the State, through 2032, to carry out the requirements of Title 1, section 533 of the Maine Revised Statutes. As it relates to public records, InforME provides the development and maintenance of electronic services made available to the public by the State through the Maine.gov web portal. This includes over one hundred online services, such as issuance of hunting and fishing licenses, vehicle registrations, access to certain data and other functions.

During this presentation, the Subcommittee also learned that InforME's parent company, Tyler Technologies, is contracted with other states. Among the states also supported by Tyler Technologies, Eric Stout highlighted Indiana which is pioneering the use of technology in responding to public records requests. In Indiana, a program is used to extract and organize data from specified datasets. The specified data is then available to any person through Indiana's website, allowing any person to acquire public data that would have otherwise only been possible to gather through a public records request. The Subcommittee agreed the program appears to reduce burdens on state employees by offering an asynchronous way to access public data. Because this program can also be used by state officials, the use of technology in Indiana also shows how public access officers can use technology to assist in responding to public records requests. As a result, the Subcommittee was interested in this use of technology to help reduce the burdens on public access officers in Maine.

The Subcommittee discussed how technology is currently used to fulfill FOAA requests by state and local public access officers and whether public access officers receive training on how to use technology to fulfill requests. The Subcommittee began this discussion at the state level. Eric Stout provided an overview of how the Office of Information Technology (OIT) offers support to state agencies through consultation. OIT helps identify ways to make the request less burdensome and less expensive using targeted searches using the Microsoft 365 suite and Microsoft Purview e-discovery tools. Although agencies have access to consultation services through OIT, the Subcommittee learned that the majority of FOAA requests are handled by the agency alone and not by OIT staff; OIT staff are typically only consulted for larger or more complex FOAA requests. Therefore, there may be some degree of variation in the way agencies respond to FOAA requests.

The Subcommittee also invited municipal, county and school associations to present on technologies used by those entities. A delegation of members of the Burdensome FOAA Requests Subcommittee, having a similar interest in exploring how technology may assist alleviate burdens on local governments when it comes to fulfilling FOAA requests, joined the Subcommittee to learn more about the technology used by municipalities and school districts. The delegation from the Burdensome FOAA Requests Subcommittee was Kevin Martin, chair of the Burdensome FOAA Requests Subcommittee, and Cheryl Saniuk-Heinig.

The Subcommittee hosted the Maine Municipal Association (MMA) to learn about the technologies, if any, used by municipalities. MMA provided a memo with several municipalities

highlighted: Augusta, Bangor, Biddeford, Falmouth, Portland and Saco. Of these municipalities, MMA reported several cities that use software to streamline the FOAA response process. The City of Portland uses NextRequest, which has aided the city in collating and redacting information. The City of Bangor and the City of Saco use Laserfiche, but the cities use Laserfiche in different capacities. MMA also reported the City of Biddeford makes all FOAA requests available on its website, and the City of Portland posts some of the responses, depending on agency discretion. Finally, the City of Augusta uses Microsoft 365, which has features to enable searches of emails based on certain criteria, and Adobe. MMA noted that some municipalities opted for free services, like those provided by Google (i.e., Google Vault), given cost of subscription-based services like Microsoft. MMA also cautioned that each municipality varies given the difference in resources, and each municipality has a different capacity to introduce technology into its process for FOAA requests. MMA indicated needing more time to collect responses from more municipalities. The Subcommittee was interested in providing the association more time to collect this information.

The Subcommittee also hosted Justin Cary, an attorney from Drummond Woodsum who represents certain school districts in Maine. Mr. Cary noted that many schools advised by Drummond Woodsum use Google services like Google Vault. School districts have also been experimenting with generative AI (GenAI), using programs like Magic School to help sift through information. At the same time, Mr. Cary noted GenAI may create burdens on school districts if the requestor uses GenAI to make the request; some districts have found requests written using GenAI are often broad, creating a large undertaking for the school district. The Subcommittee learned superintendents and technology directors, if the district has one, are primarily responsible for using technology to search for information related to the FOAA request. Like municipalities, schools appear to vary in their use of technology, and the Subcommittee expressed interest in surveying school districts to garner more information on the technology used.

Through its discussion of the technologies used by state agencies and local governments in Maine, the Subcommittee discovered that FOAA training currently does not discuss methods for fulfilling a FOAA request such as by using technology. The Public Access Ombudsman, Brenda Kielty, indicated that the State training led by the Public Access Ombudsman will cede time for Eric Stout in his support role to State agencies as the Office of Information Technology (OIT) FOAA and Litigation Support Coordinator to provide advice and assistance for running more efficient searches; however, given the current statutory requirements of the training, it is not feasible to add an entire section on how to use technology to respond to FOAA requests. In addition, both MMA and Mr. Cary noted the FOAA training offered by MMA and Drummond Woodsum focuses on the FOAA laws, not suggestions on how to fulfill a FOAA request. The Subcommittee recognized technology may need to be covered on FAQs page of the FOAA website; however, the subcommittee also felt it did not have enough information to adequately recommend specific guidance during this year of the Advisory Committee. Instead, the Subcommittee decided the most appropriate next step would be to gather more information. The Subcommittee recommended writing a letter to Maine Municipal Association, the Maine County Commissioners Association and the Maine School Management Association, to collect data to inform the 21st Right to Know Advisory Committee. The Subcommittee's goal is to use this survey as a springboard to further explore how technology may assist municipalities, counties and school districts in fulfilling FOAA requests. The Subcommittee also recommended

discussing these survey results next year to determine the most appropriate next steps. The Advisory Committee unanimously approved these recommendations, which are discussed in Part VI of this report.

Finally, the Subcommittee discussed how AI may be a tool for assisting agencies and local governments in responding to FOAA requests. The Subcommittee reviewed the AI chatbot on the State of Indiana's website, as well as an article that examined how Indiana's AI tool, Captain Record, is used to help search public records using technology. The Subcommittee also reviewed the State of Maine's Generative AI (GenAI) Policy. The GenAI policy is developed by the Office of Information Technology. It was first adopted on July 19, 2025 and was recently revised on September 30, 2025. In addition, the Subcommittee reviewed the public sector recommendations of the Maine AI Task Force (Task Force), formed via executive order by Governor Janet Mills in December 2024, before the Advisory Committee hosted the Task Force at its final meeting.

Although the Subcommittee, given its time limitations, was unable to delve deeper into the topic of how other states are using technology, especially AI, for public access requests, the members expressed interest in continuing this discussion during the next session of the Advisory Committee. The Subcommittee expressed that this will provide more time to gather input on how other states are employing technology, including AI, to respond to public records requests. The Subcommittee agreed to recommend that the 2026 Advisory Committee continue the Technology Subcommittee to review the public sector section of the Maine AI Task Force report and to review other states' technology used for public records requests (e.g., Indiana). The Advisory Committee unanimously approved these recommendations.

Burdensome FOAA Requests Subcommittee

Kevin Martin chaired the Burdensome FOAA Requests Subcommittee. Representative Rachel Henderson, Julie Finn, Betsy Fitzgerald, Judy Meyer, Eric Stout, and Cheryl Saniuk-Heinig served as Subcommittee members. The Subcommittee met on October 17, October 27, November 5 and November 19, 2025.

Early on, Subcommittee members oriented themselves with the recommendations and discussions of the previous iteration of the subcommittee in 2024 and selected topics to investigate further in 2025. The subcommittee sought to continue the discussion related to the development of a FOAA mediation process outside of the judicial system and directed staff to compile information from the previous iteration of the Subcommittee. Members also reviewed the letter from Senator Moore referred to the Subcommittee by the full Advisory Committee. The letter described the burden faced by municipalities in her district in fulfilling voluminous FOAA requests from a small group of individuals. Senator Moore's letter also proposed changes to the fee structure that a responding entity can charge to a requestor. After discussion, the Subcommittee decided to respond to Senator Moore's letter with a detailed description of recent changes to the FOAA fee structure and express the position that some changes to the fee structure have been enacted very recently and should not be revised in the immediate future and instead given time to be adequately implemented. The full Right to Know Advisory Committee voted to support this communication, which can be found in Appendix P.

Members also reviewed responses to the Subcommittee's 2024 survey request to municipalities and state agencies related to staff and resource capacity to respond to FOAA requests, and several members noted that the tone of many of the responses was unexpected based on the Subcommittee's prior conversations—that is, the majority of responding municipalities and agencies stated that their capacity to respond to FOAA requests was sufficient and that they are not consistently burdened with numerous and/or voluminous requests. However, members also remarked that the relatively small number of responding entities may not paint the full picture of the many towns and schools across the state, and that no responding entity reported having a staff member fully devoted to FOAA responsibilities.

In examining the survey responses, members raised questions about what technologies entities may have to assist with file retention or fulfilling FOAA requests, and whether these platforms help or hinder the process. In particular, members were interested in whether entities have tools that may allow them to more efficiently search for emails to/from a specific person, something commonly requested through FOAA. Noting the ways that technology could impact the burden on responding entities and the variation in available platforms, members emphasized the importance of learning what technologies responding entities have at their disposal in order for the Subcommittee to recommend best practices—specifically, which entities use which platforms, at what point in the FOAA process is technology being used, and who implements and decides the platform and its use. During this discussion, members became aware that the Technology Subcommittee had raised similar questions and had planned to hear from Maine Municipal Association and Drummond Woodsum on the topic.

Members later arranged to send a delegation of Subcommittee members to the subsequent meeting of the Technology Subcommittee to hear from these entities. Later on, the Subcommittee and the Technology Subcommittee jointly recommended that letters be sent to the Maine County Commissioners Association, Maine School Management Association and Maine Municipal Association surveying the members of those organizations about the technology used during the FOAA process, how it is used, and whether the technology helps or hinders the process, which can be found in Appendices Q, R and S. The full Advisory Committee voted to accept this recommendation at its final meeting.

Another issue raised as a continuation of the previous year's discussion was the relationship between FOAA and discovery, including how the processes overlap and how to approach the issue of the use of FOAA in lieu of discovery. The Subcommittee invited Jon Bolton, Assistant Attorney General and member of the Advisory Committee, to speak about the intersection of the rules of civil litigation and discovery and the FOAA process. Subcommittee members inquired as to whether the rules of civil litigation may provide an avenue for potential relief from burdensome requests, such as a requirement to meet and concur between parties, the requirement to send a so-called "26(G) letter" describing the ways in which one party has tried to work with the other to procure documents, or whether the definition of "burdensome" is comparable across both FOAA and discovery. Members noted that documents sought through discovery are held to certain standards, such as relevance to the case at hand, while documents sought through FOAA to later be used in a civil trial are not subject to those standards.

The Subcommittee devoted significant time to exploring a potential formal FOAA mediation process, a topic that had been raised in the previous iteration of the Subcommittee in 2024 and recommended by the Advisory Committee at the time to revisit in 2025. Throughout the 2024

and 2025 interims, Subcommittee members learned that part of what contributes to the burden on a responding entity is the time needed for the responding entity to communicate with a requestor to pare down a voluminous request. Moreover, these discussions between the requestor and the responding entity can often lead to stalemates or hostility between parties, and the Public Access Ombudsman has limited capacity to truly mediate and arrive at a solution to which both parties can agree. With this in mind, the Subcommittee continued their endeavor to formalize a FOAA mediation process.

Subcommittee members, both in 2024 and 2025, were sensitive to the limited capacity of the Public Access Ombudsman's (PAO's) office and endeavored to not add additional responsibilities to the one-person office. In 2024, Subcommittee members spent considerable time learning how the PAO office operates within the Office of the Attorney General; the subcommittee both in 2024 and 2025 discussed an expansion of the PAO's office and role in FOAA disputes to include implementation and oversight of a formal mediation process. The Subcommittee in 2024 had also examined mediation procedures in other states as well as court mediation in Maine. With this background knowledge, in 2025 the Subcommittee was able to resume the conversation from the previous year and move forward with a preliminary proposal.

The Subcommittee faced questions related to cost, staffing, the relationship between the mediation process and the court system, as well as the PAO's currently limited authority to bind parties to the outcome of mediation. Members examined Title 1, section 408-A, subsection 4-A which describes the process by which an agency may seek an action for protection from a burdensome request(s), and discussed how and where a mediation process would fit into the procedures already established in statute. Members raised the possibility that initiating a mediation during a FOAA dispute could "stop the clock" for the timeframe required to file in court. However, a mediation program would likely be separate from the court system and housed within the PAO's office with either contracted or volunteer mediators who are trained in relevant FOAA laws, or an entirely new position within the PAO's office dedicated to mediating disputes.

Subcommittee member Cheryl Saniuk-Heinig prepared a written proposal for members to review at its final meeting. The proposal detailed a formal FOAA mediation process to be administered by a new position within the PAO's office and included proposed statutory changes. The proposed process begins with a party involved in a FOAA dispute filing for mediation and includes various deadlines and timeframes, to which the parties must adhere. Participation in the process would be voluntary and confidential. The new position in the PAO's office—described in the proposal as the Deputy Ombudsman—makes initial determinations related to the nature of the dispute and additional information that is needed. Upon completion of the mediation session, which involves negotiation of a solution(s), the parties execute a mediation resolution agreement, which is a public record, and the Ombudsman issues a notice of completion. If agreement is not reached, either party may request a nonbinding written recommendation which also becomes a public record. The complete written proposal can be found in Appendix T and a flowchart describing the proposed process can be found in Appendix U.

The Subcommittee acknowledged that developing a formal FOAA mediation process would require more review and attention than the 2025 legislative interim provided and did not feel that they have a proposal detailed enough to recommend to the full Legislature for enactment. Thus, the Subcommittee moved forward with a detailed proposal for a formal FOAA mediation process

with the directive that staff would solicit feedback from the PAO and the proposal would be revisited in 2026.

The Subcommittee had questions about when the mediation process would begin in relation to the action for protection order procedure laid out in Title 1, section 408-A as well as ensuring the process is not weaponized or used in a hostile manner. However, in recognition that the proposal will require additional work in the 2026 interim, the Subcommittee voted to recommend that the written proposal be sent to the PAO for feedback, and that the 2026 Right to Know Advisory Committee revisit the proposal in collaboration with the PAO. The full Advisory Committee accepted this recommendation at its final meeting.

Full Advisory Committee Discussions

The Advisory Committee discussed a number of topics and issues as a full committee. Specifically, the Advisory Committee considered issues related to the accessibility of juvenile court records and proceedings. Some members of the Committee expressed concerns about the inability of the public to access records relating to certain criminal proceedings against juveniles, including information as to whether charges had been filed against a juvenile and the status of proceedings. The Committee reviewed the current status of the law related to these issues but ultimately determined that this topic was outside the Committee's scope of work.

The Advisory Committee was also asked by a committee member to review the status of current law shielding certain court records and proceedings related to child protection cases from public disclosure. The Committee discussed taking up this issue, but members were again concerned that the issue was outside the statutory jurisdiction of the Committee. The Committee requested that staff research this question and prepare a written response to provide the Committee with upon reconvening.

Finally, the Advisory Committee received an inquiry regarding whether current law requires that police chiefs receive FOAA training. The Committee reviewed existing law and determined that Title 1, section §412, sub-§4 does not require training of police chiefs. However, Title 25, section §2803-B requires that a "chief administrative officer" has designated a person who is trained to respond to FOAA requests. The Advisory Committee discussed whether a clarification of training requirements should be made to Title 1. The Advisory Committee determined that it needed additional information from law enforcement regarding the current interpretation of training requirements. The Committee voted to send a letter to the Maine Chiefs of Police Association seeking input.

VI. RECOMMENDATIONS

The Advisory Committee makes the following recommendations. Unless otherwise noted, the following recommendations were unanimously approved by those members present.

- ❑ **Amend certain provisions of law in Titles 25, 26, 27, 28-B, 29-A, and 32 relating to previously enacted public record exceptions**

The Advisory Committee recommends that the following public records exceptions reviewed in 2025 be amended:

- Title 25, section 1577, subsection 1, relating to the state DNA database and DNA data bank;
- Title 26, section 685, subsection 3, relating to substance abuse testing by an employer (the Subcommittee additionally recommends that this item not be included in future exceptions reviewed, as it is not a true public records exception);
- 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 29-A, section 253, relating to motor vehicle records of certain nongovernmental vehicles;
- 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 2251, subsection 7-A, relating to personally identifying accident report data contained in the state police accident database;
- Title 32, section 2600-A, relating to personal contact information for osteopathic physician applicants and licensees;
- Title 32, section 2600-E, relating to the Board of Osteopathic Licensure's ability to redact applicant or licensee records for potential risks to personal safety;
- Title 32, section 6080 relating to information held by the Bureau of Consumer Credit Protection regarding an applicant or licensee related to investigations under the Maine Money Transmission Modernization Act; and
- Title 32, section 16808, relating to records provided by a broker-dealer or investment advisor to the Department of Health and Human Services and law enforcement agencies relating to financial exploitation of eligible adults.

See recommended legislation in Appendix E and a list of public records exceptions for which no amendments are recommended in Appendix F.

- ❑ **Should the Judiciary Committee move forward in implementing a public records exception to make confidential the identities of railroad employees who are involved in an accident, the committee should consider narrowly tailoring the exception to apply to personally identifiable information.**

The Judiciary Committee asked the Advisory Committee to review the public records exception proposed by LD 1824, which was heard by the Judiciary Committee in the first session of the 132nd Legislature. LD 1824 proposed to make confidential all records of communication between the law enforcement agency and a railroad company employee involved in an accident, with certain exceptions. In its communication to the Advisory Committee, the Judiciary Committee expressed concerns that the public records exception proposed by the legislation may not meet the statutory balancing test required by Title 1 section 434 of the Maine Revised Statutes. The Exceptions Subcommittee reviewed LD 1824 and, while acknowledging the importance of the public policy behind the bill, agrees that as drafted, the language appears more

broadly written than is necessary to meet its purpose. The bill appears to make confidential the entirety of law enforcement reports regarding a railroad accident during an investigation, not just information identifying railroad employees. The Subcommittee expressed reservations about an industry-specific exception and noted that there is existing statute at Title 16, chapter 9 of the Maine Revised Statutes, the Intelligence and Investigative Record Information Act, that allows law enforcement entities to keep confidential investigation records under a number of circumstances, including to prevent an "unwarranted invasion of personal privacy." The Subcommittee believes that this statute could be applied to protect the identities of railroad workers involved in an accident, at least regarding law enforcement records. The Subcommittee also noted that this existing statute is modeled after an exception in the federal Freedom of Information Act. There is a body of caselaw interpreting Maine's exception and its federal counterpart. Therefore, any changes should be considered carefully. The Advisory Committee recommends that should the Judiciary Committee choose to move forward with legislation similar to LD 1824, it carefully consider the necessity of such legislation in the state, including by examining whether railroad employees have been subject to harassment following an accident in the state and narrowly tailored language that makes confidential personally identifiable information contained in law enforcement records and/or the accident reports required by Title 23, section 7311.

Two committee members voted against inclusion of this recommendation. These members stated that LD 1824 had received an "Ought Not to Pass" vote in the Judiciary Committee last session and should not be taken up again.

- **Continue examination of the exception found at Title 1 section 402, subsection 3, paragraph H of the Maine Revised Statutes, which provides that medical records and reports of municipal ambulance and rescue units and other emergency medical service units are confidential.**

The Advisory Committee was asked by the Maine Municipal Association (MMA) to review the exception at Title 1, section 204, subsection 3, paragraph H of the Maine Revised Statutes. MMA noted that it was unclear if the exception makes confidential the entire report of an EMS run, or if only personally identifiable medical information is confidential. The Exceptions Subcommittee researched the legislative history of this exception and found that the language predates state law regarding the treatment of confidential health information, which appears at Title 22, section 1711-C of the Maine Revised Statutes, and which aligns and references federal requirements. The Subcommittee considered recommending that the exception be amended by adding a cross reference to Title 22 MRS, section 1711-C but wanted to better understand what is included in EMS reports and whether information is included in those reports that is not otherwise considered confidential. The Advisory Committee recommends contacting Maine EMS, the Fire Marshals office and the Fire Chief's Association for feedback prior to next interim.

- **Continue discussions regarding public employee disciplinary records by looking specifically at the interaction between tiered systems of record retention, defining different levels of discipline in terms of severity, and examining whether consistency**

among definitions should be established at the entity level, at the statutory level, or at the state agency level.

The Advisory Committee recommends that, in 2026, the Advisory Committee continue a discussion on the topic of public access to employee disciplinary records by examining the issue from a structural perspective rather than focusing on the development of specific language. The Public Employee Disciplinary Records Subcommittee noted that efforts to examine this issue to date have focused primarily on developing or establishing appropriate terminology. The Subcommittee discussed that future consideration of this topic could also include an examination of how other states define different levels of discipline and what mechanisms could be in place among state agencies to develop uniformity in a definition for serious discipline. The Advisory Committee recommends approaching continued discussion of this issue with a new framework. This framework should examine the interaction between tiered systems of record retention, defining different levels of discipline in terms of severity and examining whether consistency among definitions should be established at the entity level, at the statutory level or at the state agency level.

- ❑ **Amend Title 20-A, section 13025 to require a school entity to notify the Department of Education immediately if a credential holder who is facing allegations that are the subject of, or would have triggered a covered investigation, leaves the school entity's employment for any reason prior to the conclusion of the covered investigation.**

The Advisory Committee recommends amending Title 20-A, section 13025 of the Maine Revised Statutes, which currently directs a school entity to notify the Department of Education immediately if a credential holder who is the subject of a covered investigation leaves the school entity's employment for any reason prior to the conclusion of the covered investigation. Senator Rotundo wrote to the Advisory Committee, raising a concern that this process may not be sufficient to identify and make available to future employers' information about a credential holder who is facing allegations that could be the subject of a covered investigation and who leaves the school entity's employment for any reason prior to the conclusion of the covered investigation. The Advisory Committee recommends amending Title 20-A, section 13025 to address this concern. The proposed draft legislation is included in Appendix N. The Advisory Committee will update Senator Rotundo regarding this topic.

- ❑ **Request that the Maine School Management Association work with school districts to encourage the adoption of a question in their hiring forms asking if a potential employee has ever resigned over allegations of misconduct or an investigation into misconduct from a previous employer.**

The Advisory Committee recommends that the Maine School Management Association work with school districts to encourage the adoption of a question in their hiring forms asking if a potential employee has ever resigned over allegations of misconduct or an investigation into misconduct from a previous employer**.** The Public Employee Disciplinary Records Subcommittee was asked to consider how educators and schools share information about educator investigations involving allegations related to misconduct, including investigations into

allegations of sexual misconduct that are never completed. In its work this year, the Subcommittee reviewed a request to make recommendations to strengthen collaborative processes and safeguards of schools and the department to ensure the safety of Maine students. In response to the Subcommittee's request for feedback on possible policy changes regarding public access to public employee disciplinary records, the Maine School Management Association offered to work with the Right to Know Advisory Committee and school districts to encourage the adoption of a question about past allegations or investigations into misconduct from a former employer in district hiring forms. The Advisory Committee recommends sending a letter to the Maine School Management Association to formally accept their offer to work with school districts to adopt language on their hiring forms that asks if a potential employee has ever resigned over allegations of misconduct or an investigation into misconduct from a previous employer.

- ❑ **Request that the Maine Municipal Association, Maine County Commissioners Association and Maine School Management Association distribute surveys regarding use of technology, including AI, in responding to FOAA requests, and that the Maine School Management Association include in that distribution district technology directors. Survey results will be compiled by committee staff in advance of next year's convening of the Advisory Committee.**

The Advisory Committee recommends sending letters to the Maine Municipal Association, Maine County Commissioners Association and Maine School Management Association requesting the entities distribute surveys regarding use of technology, including artificial intelligence, in responding to FOAA requests. The Committee specifically recommends that the Maine School Management Association include district technology directors in its request. During its discussions this fall, the Technology Subcommittee began exploring the variety of approaches public entities use in responding to FOAA requests. Based on initial investigations, the Subcommittee found that there appears to be a wide range of technology used by public entities, ranging from paper-based approaches to specialized software. However, the technology Subcommittee determined that it was necessary to gather more information about these various approaches to better understand how to provide uniform guidance to entities. The Advisory Committee asks that staff compile responses received during the spring and summer and present those responses to the Committee next fall.

- ❑ **Continue the Technology Subcommittee in the 21st Right to Know Advisory Committee in 2026, continue to monitor any actions taken to advance the recommendations of the Maine Artificial Intelligence Task Force report, and continue to monitor the rapid development of artificial intelligence (AI), particularly in its use by public entities and the intersection of AI and FOAA. Arrange a presentation, during the 21st Right to Know Advisory Committee, in which a vendor provides overview of the technology available to states for public records, exploring how other states use technology, including but not limited to AI, to assist in retaining, searching and distributing public records (e.g., Indiana).**

The Advisory Committee recommends continuing the Technology Subcommittee in the 21st Right to Know Advisory Committee in 2026. The Committee heard a presentation by the Governor's Office of Policy and Innovation, which recently published the Maine Artificial Intelligence Task Force report, which itself proposed a number of recommendations related to artificial intelligence and government operations. Due to the rapid pace of technology and particularly of artificial intelligence, the Committee believes that it is vital to stay apprised of innovations impacting the ability of entities to respond to FOAA requests. The Committee also recommends that during the 21st Right to Know Advisory Committee, a presentation be arranged from vendor that is able to provide an overview of the technology available to states for public records. The presentation should explore how other states, such as Indiana, use technology, including but not limited to AI, to assist in retaining, searching and distributing public records.

- ❑ **Continue to examine the adoption of language relating to executive sessions and the confidentiality of information discussed at executive sessions. Request feedback from the Education and State and Local Government joint standing committees.**

The Advisory Committee recommends continued examination of adding statutory language regarding the confidentiality of information discussed during executive sessions. Currently, state law does not establish as confidential information disclosed or discussed at executive sessions. LD 1820 (129th Legislature) proposed such provision, but it did not pass the Legislature. The Subcommittee on Burdensome FOAA requests examined this legislation and considered proposing alternative language. However, the Subcommittee ultimately determined that further study of this topic is required. The Committee recommends consultation with members of the Education and State and Local Government joint standing committees regarding this topic.

- ❑ **Prior to the convening of the 21st Right to Know Advisory Committee, research whether the Advisory Committee is authorized by statute to recommend that the Judiciary Committee amend the statutes governing access to court records in child protection cases**.

A committee member requested that the Advisory Committee review the status of current law shielding certain court records and proceedings related to child protection cases from public disclosure. The Committee discussed taking up this issue. However, members were concerned that the issue is not within the statutory jurisdiction of the Committee. The Committee requests that staff research this issue and prepare a written overview to provide to the Committee with upon reconvening.

- ❑ **Request information from police chiefs regarding possible amendment of Title 1, section 412, subsection 4 to require Chiefs of Police to complete FOAA training, for consideration by the Advisory Committee next year.**

The Advisory Committee received an inquiry from a member of the public regarding whether current law requires that police chiefs receive FOAA training. The Committee reviewed existing law and determined that the language regarding FOAA training requirements found at Title 1, section 412, subsection 4 of the Maine Revised Statutes does not include police chiefs.

However, there is language at Title 25, section 2803-B requiring that a "chief administrative officer" has designated a person who is trained to respond to FOAA requests. The Advisory Committee discussed whether a clarification of training requirements should be made to Title 1 and determined that it needed additional information from law enforcement regarding the current interpretation of training requirements. The Committee sent a letter to the Maine Chiefs of Police Association seeking input and intends to revisit this topic next year..

- ❑ **Continue the Burdensome FOAA Requests Subcommittee in the 21st Right to Know Advisory Committee in 2026, continue discussions regarding the adoption of a FOAA request mediation process, and, during the period prior to the convening of the 21st Advisory Committee, direct staff and a designated member of the Committee to consult with the Public Access Ombudsman regarding a mediation process.**

The Advisory Committee recommends that, in 2026, the Committee reestablish the Burdensome FOAA Requests Subcommittee and that it continues to discuss the development of a formal FOAA dispute mediation process. During 2024, the Subcommittee compared mediation and adjudicatory models and determined that they favored a mediation process over a model involving an administrative or adjudicatory hearing to resolve FOAA disputes. During 2025, the Committee drafted a rough model of such a mediation process. The Committee recommends that staff and a designated member of the Committee consult with the Public Access Ombudsman regarding the proposed model and continue discussions during the reconvening of the Committee in 2026.

VII. FUTURE PLANS

In 2026, the Right to Know Advisory Committee will continue to discuss the ongoing issues identified in this report. The Advisory Committee will also continue to provide assistance to the Joint Standing Committee on Judiciary relating to proposed legislation affecting public access. The Advisory Committee looks forward to another year of activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations included in this report.

APPENDIX A

Authorizing Legislation: 1 MRSA §411

§411. Right To Know Advisory Committee

1. Advisory committee established. The Right To Know Advisory Committee, referred to in this chapter as "the advisory committee," is established to serve as a resource for ensuring compliance with this chapter and upholding the integrity of the purposes underlying this chapter as it applies to all public entities in the conduct of the public's business.
[PL 2005, c. 631, §1 (NEW).]

2. Membership. The advisory committee consists of the following members:

A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

C. One representative of municipal interests, appointed by the Governor; [PL 2005, c. 631, §1 (NEW).]

D. One representative of county or regional interests, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

E. One representative of school interests, appointed by the Governor; [PL 2005, c. 631, §1 (NEW).]

F. One representative of law enforcement interests, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

G. One representative of the interests of State Government, appointed by the Governor; [PL 2005, c. 631, §1 (NEW).]

H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

I. One representative of newspaper and other press interests, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

J. One representative of newspaper publishers, appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House; [PL 2015, c. 250, Pt. A, §1 (AMD).]

M. The Attorney General or the Attorney General's designee; [PL 2021, c. 313, §2 (AMD).]

N. One member with broad experience in and understanding of issues and costs in multiple areas of information technology, including practical applications concerning creation, storage, retrieval and accessibility of electronic records; use of communication technologies to support meetings, including teleconferencing and Internet-based conferencing; databases for records management and reporting; and information technology system development and support, appointed by the Governor; and [PL 2021, c. 313, §3 (AMD).]

O. One representative having legal or professional expertise in the field of data and personal privacy, appointed by the Governor. [PL 2021, c. 313, §4 (NEW).]

The advisory committee shall invite the Chief Justice of the Supreme Judicial Court to designate a member of the judicial branch to serve as a member of the committee.
[PL 2021, c. 313, §§2-4 (AMD).]

3. Terms of appointment. The terms of appointment are as follows.

A. Except as provided in paragraph B, members are appointed for terms of 3 years. [PL 2005, c. 631, §1 (NEW).]

B. Members who are Legislators are appointed for the duration of the legislative terms of office in which they were appointed. [PL 2005, c. 631, §1 (NEW).]

C. Members may serve beyond their designated terms until their successors are appointed. [PL 2005, c. 631, §1 (NEW).]
[PL 2005, c. 631, §1 (NEW).]

4. First meeting; chair. The Executive Director of the Legislative Council shall call the first meeting of the advisory committee as soon as funding permits. At the first meeting, the advisory committee shall select a chair from among its members and may select a new chair annually.
[PL 2005, c. 631, §1 (NEW).]

5. Meetings. The advisory committee may meet as often as necessary but not fewer than 4 times a year. A meeting may be called by the chair or by any 4 members.
[PL 2005, c. 631, §1 (NEW).]

6. Duties and powers. The advisory committee:

A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws; [PL 2005, c. 631, §1 (NEW).]

B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best practices for agencies and public officials. The advisory committee shall also provide general information about the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and whom to contact for specific inquiries; [RR 2005, c. 2, §1 (COR).]

C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as whom to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws; [RR 2005, c. 2, §1 (COR).]

D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics. The advisory committee shall recommend a process for collecting the training completion records required under section 412, subsection 3 and for making that information publicly available; [PL 2007, c. 576, §1 (AMD).]

E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation; [PL 2005, c. 631, §1 (NEW).]

F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released; [PL 2005, c. 631, §1 (NEW).]

G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations; [PL 2005, c. 631, §1 (NEW).]

H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered; [PL 2005, c. 631, §1 (NEW).]

I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records; [PL 2005, c. 631, §1 (NEW).]

J. Shall review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public; and [PL 2005, c. 631, §1 (NEW).]

K. May undertake other activities consistent with its listed responsibilities. [PL 2005, c. 631, §1 (NEW).]

[PL 2007, c. 576, §1 (AMD).]

7. Outside funding for advisory committee activities. The advisory committee may seek outside funds to fund the cost of public hearings, conferences, workshops, other meetings, other activities of the advisory committee and educational and training materials. Contributions to support the work of the advisory committee may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring to make a financial or in-kind contribution shall certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the advisory committee's activities. Such a certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of those funds. The Executive Director of the Legislative Council shall administer any funds received by the advisory committee.

[PL 2005, c. 631, §1 (NEW).]

8. Compensation. Legislative members of the advisory committee are entitled to receive the legislative per diem, as defined in Title 3, section 2, and reimbursement for travel and other necessary expenses for their attendance at authorized meetings of the advisory committee. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses and, upon a demonstration of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the advisory committee.

[PL 2005, c. 631, §1 (NEW).]

9. Staffing. The Legislative Council shall provide staff support for the operation of the advisory committee, except that the Legislative Council staff support is not authorized when the Legislature is in regular or special session. In addition, the advisory committee may contract for administrative, professional and clerical services if funding permits.

[PL 2005, c. 631, §1 (NEW).]

10. Report. By January 15, 2007 and at least annually thereafter, the advisory committee shall report to the Governor, the Legislative Council, the joint standing committee of the Legislature having jurisdiction over judiciary matters and the Chief Justice of the Supreme Judicial Court about the state of the freedom of access laws and the public's access to public proceedings and records.
[PL 2005, c. 631, §1 (NEW).]

SECTION HISTORY

RR 2005, c. 2, §1 (COR). PL 2005, c. 631, §1 (NEW). PL 2007, c. 576, §1 (AMD). PL 2015, c. 250, Pt. A, §§1, 2 (AMD). PL 2021, c. 313, §§2-4 (AMD).

APPENDIX B

Membership list: Right to Know Advisory Committee

Right to Know Advisory Committee

1 MRSA §411

Membership List

Name	Representation
Sen. Anne Carney, Chair	Senate member of Judiciary Committee, appointed by the President of the Senate
Rep. Rachel Henderson	House member of Judiciary Committee, appointed by the Speaker of the House
Amy Beveridge	Representing broadcasting interests, appointed by the President of the Senate
Jonathan Bolton	Attorney General's designee
Justin Chenette	Representing the public, appointed by the President of the Senate
Lynda Clancy	Representing newspaper and other press interests, appointed by the President of the Senate
Vacant	Representing municipal interests, appointed by the Governor
Julie Finn	Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court
Betsy Fitzgerald	Representing county or regional interests, appointed by the President of the Senate
Jen Lancaster	Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House
Bryan MacMaster	Representing law enforcement interests, appointed by the President of the Senate (resigned November 2025)
Kevin Martin	Representing state government interests, appointed by the Governor
Judy Meyer	Representing newspaper publishers, appointed by the Speaker of the House
Jason Moen	Representing law enforcement interests, appointed by the President of the Senate (appointed December 2025)
Tim Moore	Representing broadcasting interests, appointed by the Speaker of the House
Kim Monaghan	Representing the public, appointed by the Speaker of the House
Eric Stout	A member with broad experience in and understanding of issues and costs in multiple areas of information technology, appointed by the Governor
Cheryl Saniuk-Heinig	A member with legal or professional expertise in the field of data and personal privacy, appointed by the Governor
Connor P. Schratz	Representing school interests, appointed by the Governor

APPENDIX C

Public Employee Disciplinary Records Stakeholder Report – Maine State Archives

PUBLIC EMPLOYEE DISCIPLINE RECORDS STAKEHOLDER WORKSHOP REPORT

PREPARED BY THE MAINE STATE ARCHIVES
AND NEW ENGLAND FIRST AMENDMENT COALITION

TO: Maine Right to Know Advisory Committee
FROM: Maine State Archives and New England First Amendment Coalition
RE: Public Employee Discipline Records Stakeholder Workshop on June 12, 2025
DATE: August 14, 2025

Introduction and Participants

On June 12, 2025, the Maine State Archives convened a stakeholder discussion on behalf of the Right to Know Advisory Committee to discuss a potential shift to a tiered retention and disclosure system of public employee disciplinary records. Attendees represented a range of state and local agencies, including the Maine State Police, the Maine State Archives, the Maine Education Association, as well as media and freedom of information organizations, including the Maine Freedom of Information Coalition, the Sun Journal, and the New England First Amendment Coalition.

Attendees

- Steve Collins, Sun Journal
- Christian Cotz, Maine State Archivist
- Jesse Hargrove, President, Maine Education Association
- Judith Meyer, Maine Freedom of Information Coalition
- Lincoln Ryder, Interim Executive Director, Maine Criminal Justice Academy
- Lt. Col. Brian P. Scott, Maine State Police
- Justin Silverman, Executive Director, New England First Amendment Coalition
- Christie Young, Human Resources Director at City of Augusta, Maine

Absent

- Steve Bailey, Executive Director, Maine School Management Association
- Mark Brunton, President, MSEA
- Kate Cough, Editor, The Maine Monitor
- Matt Dudley, Director of Organizational Development, State of Maine
- Toni Dyer, Maine County Commissioners Association
- Tom Feeley, General Counsel at MSEA-SEIU Local 1989

MSA Staff

- Tammy Marks, Deputy Director
- Susan Verrier, Records Management Analyst II
- Tiffany Tattan-Awley, Records Management Analyst I

Summary of Discussion

The main issues for consideration at the meeting were:

(1) The creation of a tiered system of record retention based on the "seriousness" of the misconduct.

   a. How would such tiers be defined? (i.e., financial loss, termination, etc.)
   b. Would definitions be universal across all agencies and employee roles?
   c. Who would determine what tier would apply to each action recorded?

(2) Whether the availability of these records is appropriately governed by the record retention schedule or whether it would be appropriate to limit the amount of time that such records are public pursuant to the Freedom of Access Act.

Tiered Record Retention System

On the first issue, the group discussed a variety of concerns across agencies and vacillated on the question of whether or not a tiered system would be advantageous.

Above all else, the group agreed that state agencies must clearly and consistently define key terms, including "discipline," "suspension," and "final agency action." Attendees explained how definitions vary among their respective agencies, meaning there is little consistency in what kinds of discipline are recorded, retained as records, and subject to FOAA across state agencies. This lack of consistency can result in downstream effects on behavior modification and public trust.

By way of example, one attendee explained that the Maine State Police and a local police department might define key disciplinary terms differently, meaning the same misconduct occurring at separate agencies may yield different disciplinary outcomes. Because the discipline may be defined differently between agencies, the same misconduct might become public record at one agency and not at another. Different agencies will then give different information to requesters about which records are available to the public, further complicating the process. This may give the appearance that one of the two agencies is withholding information that the other is providing. This cuts against the goal of building trust with the communities these agencies serve and with members of the media, who have an obligation to report on incidents of misconduct fairly and accurately.

While there was consensus among the workshop attendees that defining key terms is a top priority, the group spent much of the meeting discussing arguments for and against a tiered system.

Arguments *Against* a Tiered System

Some of the group expressed concerns that a tiered system would be unnecessarily complicated when the goal is to simplify the process and create uniformity across agencies. The idea presupposes that everyone making decisions about discipline is using the same matrix that requires public disclosure when certain circumstances exist. In reality there could be two separate cases involving nearly identical misconduct which result in different discipline because of variance in the model's application.

The group was also concerned that a tiered system could result in more employee grievances, as employees might be inclined to involve their unions and argue that a mandatory higher level of discipline, which would be subject to FOAA, is disproportionate to the offense. In such a case, the agency would be incentivized to mitigate the discipline to a lower level to avoid public disclosure.

One attendee pointed out that this system is particularly vulnerable to problems of favoritism, wherein the supervisor is responsible for disciplining an employee with whom he or she is close and treats serious misconduct as a lesser offense to circumvent disclosure requirements. In a similar vein, another attendee noted that a tiered system can be counterproductive to the goal of progressive discipline and modifying inappropriate behavior among employees. Efforts to reform these employees may be stymied in a system that disincentivizes certain discipline for fear of public disclosure.

The group also discussed the difficulties of determining the criteria for the tiers. In particular, there was resistance to making the disclosure metric the financial impact to the employee. That is, if an employee were to receive paid suspension, it would not be public record, while unpaid suspension or termination would be public. At many agencies, this would favor high-level supervisors who are more likely to receive paid suspension than lower-level employees.

Attendees also considered whether to treat differently the records of employees whose roles require certification or licensure. This would include the police and other law enforcement officers, as well as other public employees, such as bus drivers, who are required to have a special license.

The group concluded that a bright line rule regarding certifications would be overinclusive, as it would put people with vastly different levels of responsibility to the public in the same category for disciplinary

purposes. Alternatively, an effective tiered system might consider, but not center around, whether an employee holds a position of trust, such as a schoolteacher or police officer, as opposed to a public works employee.

Arguments *For* a Tiered System

Throughout the discussion, the group also considered the merits of a tiered system. To start, the group generally agreed that different levels of misconduct warrant different treatment, as not all offenses require disclosure. A system more attuned to these nuances would mean minor infractions—some of which may be part of the learning process and professional growth in a particular job—would not follow someone for the rest of their career as a public employee.

A tiered system might also better reflect the progressive discipline model employed by many state agencies. That is, only certain levels of disciplinary action would become public record, and public employees would only receive such discipline after repeated incidents of misconduct. This gives offending employees the opportunity to correct their behavior and continue their professional development before their misconduct becomes public record.

A tiered system also balances important considerations of recruitment, retention, and employee privacy. One attendee noted that he was not particularly concerned about a chilling effect on recruitment because few people enter their roles as public employees expecting to engage in malfeasance. It may, however, cause issues with retention once misconduct has occurred and employees are worried about their missteps being made public. A tiered system would help protect against that.

Other Considerations

The State Police and Maine Education Association (MEA) were particularly concerned about issues of due process and privacy. Lt. Col. Brian P. Scott of the Maine State Police said that under the Fourteenth Amendment, public employees have a constitutionally protected liberty interest in maintaining one's reputation. In light of due process concerns, he recommended a uniform tiered system where the tiers are based on sustained findings, not subjective misconduct labels.

Jesse Hargrove of the MEA was particularly worried that a threshold based on sustained findings would negatively affect public education employees. Lower-level discipline of teachers and school administrators, such as brief suspensions, he explained, may be misinterpreted by the public. Highlighting how agencies treat — and define — discipline differently, Hargrove explained that a suspension in the context of public education might be a final agency action regardless of whether the decision is made at the school level or the school board level, and regardless of whether it is appealable. Hargrove noted that teachers and administrators may err in relatively minor ways as they learn how to do their jobs, which nonetheless results in an unpaid suspension—discipline which may not be of much relevance to the public.

In response, other attendees pointed out that parents should have the right to know when and why their child's teacher has been suspended, even if it is for a minor administrative infraction. Moreover, they argued, because suspension is not the first line of action in a progressive discipline model, suspension would only come after adequate due process. If a teacher is suspended after being made aware of an issue, and having an opportunity to correct course, the relevant disciplinary records should be public.

Public Accessibility vs. Retention Schedule

Finally, the group briefly discussed whether the amount of time a record is available to the public should mirror the retention schedule. One attendee noted that Brady-Giglio protocols require law enforcement to retain certain materials forever for prosecutorial purposes, though such records may not be available to the public for as long.

The group concluded that there is no strong argument in favor of retaining non-Brady-Giglio records that are no longer available to the public. Moreover, retaining non-Brady-Giglio records longer than they are subject to FOA seems to conflict with the general record retention schedule.

Recommendations

Further Consideration of Tiered System

While the workgroup did not explicitly endorse a two-tiered retention metric, consensus began to form around a system similar to the following:

- Tier 1: When there are sustained findings relating to higher levels of discipline, including but not limited to suspension, demotion and termination, records will be considered public in perpetuity.
- Tier 2: When there are sustained findings relating to any form of discipline outside the scope of Tier 1, records will be considered public for five years.
- Prior to a sustained finding for Tier 1 and Tier 2 offenses, records will not be public pursuant to FOAA.

It should be noted that one significant concern regarding this model is the inability of the public to access documents related to reports of employee of misconduct that do not result in a sustained finding. Attendees recognized the possibility of abuse but disagreed on the likelihood of such abuse occurring and to what extent. At least one attendee also emphasized the difficulty in monitoring favoritism and bias within public agencies without information on even minor infractions.

Development of Consistent Guidelines

As previously discussed, it is of critical importance to clearly and consistently define key terms, such as "discipline," "suspension," and "final agency action."

Better Guidance on CBA Implications

It is also important to note that a tiered retention system may conflict with collective bargaining agreements (CBAs), as some negotiated retention schedules are shorter than either of the proposed tiers. In theory, any law the RTKAC proposes will preempt a CBA, but attendees noted that agencies may flout new rules. Accordingly, the proposed system must be explicit in addressing possible conflicts with CBAs.

APPENDIX D

Summary of 5/21/25 Law Enforcement and Media Meeting

Right to Know Advisory Committee
Law Enforcement and Media Meeting

May 21, 2025 • Augusta, Maine

Purpose

The Right to Know Advisory Committee, created by Public Law 2005, Chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws, reports to the Joint Committee on Judiciary.

At the conclusion of its annual slate of business in December 2024, the RTKAC directed sitting members who represent broadcast and print media to convene a meeting with law enforcement to discuss each other's concerns in an effort to enhance collaboration during and immediately after critical public safety incidents.

Accordingly, the media representatives sitting on the RTKAC invited members of state, county and local law enforcement to a joint meeting held May 21, 2025 in the Deering Building on the State of Maine's AMHI Campus.

Goal

- Share information about the pressures and constraints experienced by members of the media when gathering and timely reporting information regarding public safety incidents and ongoing criminal investigations on the one hand and the deadlines, staffing issues, complex legal issues and other challenges facing law enforcement during these incidents on the other hand; and

- Develop recommendations for increasing collaboration between law enforcement agencies and representatives of the media in a way that will ensure the public has access to timely, reliable information about significant public safety incidents and criminal investigations.

Attended by approximately 30 representatives from state, county and local law enforcement personnel, as well as print and broadcast news outlets, the four-hour meeting the conversations were frank, honest, congenial, productive and constructive.

Law enforcement included the Maine Commissioner of Public Safety; Knox, Sagadahoc, Cumberland and Penobscot County Sheriffs; Police Chiefs and Public Information Officers from the municipalities of Cumberland, Bath, Old Orchard, Bangor, Fort Fairfield, Brunswick, Scarborough, Portland and Waterville; and representative from the Medical Examiner's Office.

Media representatives included two televisions stations and three newspapers, in addition to the four who sit on the Right to Know Advisory Committee.

By all accounts, the meeting was successful, with a resulting commitment by all that another gathering, or regional gatherings, should be scheduled to continue the conversations. In

addition to the opportunity to drill down on issues related to geography; i.e., Northern Maine and Southern Maine have different demographics, and Coastal Maine and Western Maine have their own characteristics, these regional meetings will also encourage greater attendance with short driving distances.

By the end of the meeting, two regional meetings had been tentatively scheduled, one in Saco, the other in Knox County.

The May 21 agenda was kept intentionally simple:

Discuss the role of media and its responsibility to inform the public during critical incidents.

Define the code of ethics and rules of conduct under which law enforcement and media respectively operate.

Discuss the job of law enforcement and the job of media at crises and incidents.

Refine the standard of communication at emergency scenes.

Define operating protocol at incidents and scenes, and establish best practices for communication infrastructure between first responders/law enforcement and the media

From those conversations, the following points were made:

1) The goals of law enforcement and emergency response/law enforcement maintain common ground: Police and first responders have the responsibility to protect the public and media has the mission of informing the public with accurate and validated news. (The first point in the Society of Professional Journalists' code of ethics states that journalists should verify information before releasing it and should use original sources whenever possible.)

2) With the advent of social media, and the internet's demand for 24-7 information, there has been an increase of misinformation and public panic. The media attempts to counteract that trend, and be the trusted source for the facts.

   "There is a rat race to get ahead of social media," said law enforcement.

   "Part of our job is to beat out the misinformation," said media.

   Suggested Action: Establish and strengthen contact lists of journalists and law enforcement officials, return to email blasts for public safety announcements and news releases. Understand better how social media currently engages the public, and rely less on it for circulation of law enforcement information.

3) The relationship between law enforcement and media has deteriorated in Maine for a variety of reasons, including the increase of electronic communication over personal one-on-one visits and phone calls; shrinking staff levels; COVID; and social media.

Suggested Action: Hold periodic scheduled visits, or meetings, to flesh out misunderstandings and streamline communication channels. Actively work to understand statutes that govern law enforcement and what protocols govern media. The relationship must be built outside moments of crises.

"Hope what we could accomplish today is to see into each other's world, find correct information to create a safer public."

4) Law enforcement emphasizes trust and relationship-building as integral to its relationship with media. Policies and law mandate what information is released, and when it is released. Journalists work for the public interest; i.e., what roads are closed, is there an imminent danger to the neighborhood, is community support needed for victims.

"Generic info about what is happening," is what the media requests. "We do not want to stay there and be a thorn."

Media is looking for baseline information for a quick turnaround to the public, information that is accurate and from a first-hand source. While a incident unfolds, longstanding and trusted news outlets are getting peppered by the public for information.

"Logistics, it is not that we do not want get the info to you, but how to get it to you," said law enforcement.... "We are trying to build a case, but if we rush to get info out to feed the machine, we mess up the case, and put a bad person back out on the street."

Suggested Action: Cultivate a channel directly to a spokesperson or incident command officer to obtain initial information to let the public know what the status of the situation may be, and let the public know that more information will be forthcoming.

5) There are 150 law enforcement entities across Maine. They respond to their own chains of command; e.g., sheriffs and county government; state police and state administration; tribal police and leadership; local police departments and municipal leadership.

Suggested Action: Revive or develop rapport between media and law enforcement. Identify points of contact in statewide and local media with periodically updated email lists, communicate regularly (drop by the station or call on the phone).

"Cops would rather go into a hail of bullets rather than get in front of cameras." Why? Because they do not know what questions will be asked and are apprehensive of what they say. On the flip side, law enforcement would benefit from more pointed instruction and training about handling inquries from the media.

"Anytime we've had a incident and media wants something on camera, I told them up front, what questions are you going to ask?"

6) "We are not afraid of who is in the room, we are more afraid of those who have a blog, who are not even journalists, the scanner chasers."

With the increase of internet bloggers, start-up news websites, and social media, there is likewise a rising number of would-be citizen reporters, without the training. This presents a layer of confusion at scenes, if there is no established communication.

Suggested Action: Adopt easily recognizable identifying credentials so that first responders and law enforcement know immediately they are communicating with a credible news outlet.

7) Resources, such as a police information officer, are scarce in the more rural parts of the state. It can be more difficult to establish contact with the lead officer at a crisis scene and obtain information.

"There is a need for information at the scene, we are trying to get the truth out, let us perform our style of public service."

Suggested Action: Establish communication with the PDs and agencies and have communication channels in place before crises happen.

Immediate conclusions:

Schedule more of these meetings

Train law enforcement at all levels about talking with media

Build trust and make all parties feel more comfortable

Build on a system of how to recognize credentialed journalists

Attendees

Alice J. Briones, Office of Medical Examiner
Beth Jones, WVII-TV
Chief Andrew Booth, Bath Police Department
Chief Charles Rumsey, Cumberland Police Department
Chief Elise Chard, Old Orchard Police Department
Chief Jason Moen, Auburn Police Department
Chief Mark Hathaway, Bangor Police Department
Chief Matthew Cummings, Fort Fairfield Police Department
Chief Scott Stewart, Brunswick Police Department
Chief William Bonney, Waterville Police Department
Jake Freudberg, Morning Sentinel
Jon Small, WABI TV

Lt. Randall Keaton, Maine State Police-Major Crimes-South
Marie Weidmayer, Bangor Daily News
Michael Sauschuck, Commissioner of Public Safety
Sheriff Joel Merry, Sagadahoc County Sheriff's Office
Sheriff Kevin Joyce, Cumberland County Sheriff's Office
Sheriff Patrick Polky, Knox County Sheriff's Office
Mary Crabtree, Knox County Sheriff's Office
Justin MacDonald, News Center Maine
Jason Longley, Waterville Police Department
David Hemingway, Old Orchard Beach Police Department
Lindsey Chasteen, Office of Medical Examiner
Mark Rediker, WABI-TV
Ryan Cote, Blueberry Broadcasting
Chris Farley, Camden Fire Chief
Amy Beveridge, WMTW
Lynda Clancy, PenBayPilot.com
Brian MacMaster, Dirigo Safety
Judith Meyer, New England First Amendment Coalition, MPA
Tim Moore, Maine Association of Broadcasters

Report respectfully submitted by Right to Know Advisory Committee members

Amy Beveridge, representing broadcasting interests

Lynda Clancy, representing newspaper and other press interests

Brian MacMaster, representing law enforcement interests

Judy Meyer, representing newspaper publishers

Tim Moore, representing broadcasting interests

Right to Know Advisory Committee
Law Enforcement and Media Meeting Summary

May 21, 2025 • Augusta, Maine

Thank you all for taking the time from busy schedules to attend the May 21 meeting in Augusta to discuss the relationship between Maine law enforcement and public safety personnel and representatives of the media.

By all accounts, the meeting was successful. Our four-hour meeting included conversations that were frank, honest, congenial, productive and constructive, and we walked away knowing we share many of the same goals.

The Right to Know Advisory Committee, created by state statute as a permanent advisory council with responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws, reports to the Joint Committee on Judiciary.

At the conclusion of its annual business in December 2024, the RTKAC directed sitting members who represent broadcast and print media to convene a meeting with law enforcement to discuss each other's concerns in an effort to enhance collaboration during and immediately after critical public safety incidents.

Accordingly, the media representatives sitting on the RTKAC invited members of state, county and local law enforcement and public safety to the joint meeting held in the Deering Building on the State of Maine's AMHI Campus.

While we will submit a report to the RTKAC, we wanted to continue communicating with you now about the meeting's outcome.

Our goals were simple:

Discuss the role of media and its responsibility to inform the public during critical incidents.
Define the code of ethics and rules of conduct under which law enforcement and media respectively operate.
Discuss the job of law enforcement and the job of media at crises and incidents.
Refine the standard of communication at emergency scenes.
Define operating protocol at incidents and scenes, and establish best practices for communication infrastructure between first responders/law enforcement and the media

We have a short list of agreed-upon recommendations:

1) The goals of law enforcement and emergency response/law enforcement maintain common ground: Police and first responders have the responsibility to protect the public and media has the mission of informing the public with accurate and validated news. (The first point in the Society of Professional Journalists' code of ethics states that journalists should verify information before releasing it and should use original sources whenever possible.)

2) Establish and strengthen contact lists of journalists and law enforcement officials, return to the practice of email blasts for public safety announcements and news releases. Understand better how social media currently engages the public, and rely less on it for circulation of law enforcement information.

3) Hold periodic scheduled visits, or meetings, to flesh out misunderstandings and streamline communication channels. Actively work to understand statutes that govern law enforcement and what protocols govern media. The relationship must be built outside moments of crises.

4) Cultivate a channel directly to a spokesperson or incident command officer to obtain initial information to let the public know what the status of the situation may be, and let the public know that more information will be forthcoming.

5) Revive or develop rapport between media and law enforcement. Identify points of contact in statewide and local media with periodically updated email lists, communicate regularly (drop by the station or call on the phone).

6) Adopt easily recognizable identifying credentials so that first responders and law enforcement know immediately they are communicating with a credible news outlet.

7) Establish communication with the police departments, fire chiefs and agencies, and have communication channels in place before crises happen.

8) Hold meetings between law enforcement and public safety official with media on a regional basis to drill down on issues related to geography; i.e., Northern Maine and Southern Maine have different demographics, and Coastal Maine and Western Maine have their own characteristics. Regional meetings also encourage greater attendance with short driving distances.

Immediate conclusions:
Schedule more of these meetings
Train law enforcement at all levels about talking with media
Build trust and make all parties fell more comfortable
Build on a system of how to recognize credentialed journalists

Again, thank you for attending!

Right to Know Advisory Committee members
Amy Beveridge, representing broadcasting interests
Lynda Clancy, representing newspaper and other press interests
Brian MacMaster, representing law enforcement interests
Judy Meyer, representing newspaper publishers
Tim Moore, representing broadcasting interests

APPENDIX E

Recommended Legislation to Amend Public Records Exceptions

Exceptions – draft legislation

Reference #1

25 MRSA §1577, sub-§2

§1577. DNA records

2. ~~Access to records.~~ ~~The following persons or agencies may have access to DNA records:~~ Permissible disclosure. DNA records may be disclosed to the following persons or agencies:

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;

B. The FBI for storage and maintenance of CODIS;

C. Medical examiners and coroners for the purpose of identifying remains; and

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~~ Disclosure to a person who has been identified and charged with a criminal offense or a juvenile crime ~~has access only~~ is limited to that person's records and any other records that person is entitled to under the Maine Rules of Evidence.

Reference #3 (13)

26 MRSA §685, sub-§3

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~~ disclosed 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~~ disclosure of this information when required or permitted by state or federal law, including ~~release~~ disclosure 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.

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.

Reference #4 (28)

27 MRSA §10, sub-§6

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~~ only:

A. In a de-identified, aggregate form for study, evaluation or audit of the program; and

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

Reference #5 (34)

28-B MRSA §114

§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. However, if the home address, telephone number or e-mail address have been provided as the public contact information, that information is not confidential

Reference #10 (39)

29-A MRSA §253

§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~~ are confidential for a specific period of time, which may not exceed the expiration of the current registration.

Reference #15 (44)

29-A MRSA §1301 sub-§6-A

§1301. Application

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~~ disclose 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.

Reference #19 (49)

29-A MRSA §2251, sub-§7-A

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.

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 are confidential. ~~Such data are not public records for the purposes of Title 1, chapter 13.~~

B-1. The Department of Public Safety, Bureau of State Police may ~~disseminate~~ disclose 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.

C. ~~The Department of Public Safety, Bureau of State Police may publicly disseminate nonpersonally~~ Nonpersonally identifying accident report data that are contained in an accident report database maintained, administered or contributed to by the Bureau of State Police are not confidential. The cost of furnishing a copy of such data is not subject to the limitations of Title 1, section 408-A

Reference #33 (73)

33 MRSA §2600-A

§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 and email address. An applicant's or licensee's personal residence address, ~~and~~ telephone number ~~is~~ and email address are confidential information and may not be disclosed except as permitted by this section or as required by law~~,~~. ~~Unless~~ However, if the personal residence address and telephone number have been provided as the public contact address, the personal residence address and telephone number are not confidential. 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 and email address 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.

Reference #34 (74)

32 MRSA §2600-E

§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 confidential information ~~that is not public~~ before making the record available for inspection or copying.

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.

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.

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.

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.

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.

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.

Reference #35 (80)

32 MRSA §6080

§6080. Confidentiality

Information confidentiality and disclosure is governed by this section.

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 except as provided in this section.

2. Authorized disclosure. The administrator may disclose confidential 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.

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.

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;

B. The business address of a licensee's registered agent for service;

C. The name, business address and telephone number of each authorized delegate;

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;

E. Copies of nonconfidential final orders of the bureau relating to a violation of this Act or rules implementing this Act; and

F. Imposition of an administrative fine or penalty under this Act.

Reference #37 (95)

32 MRSA §16808

§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~~ confidential. 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.

APPENDIX F

Existing Public Records Exceptions in Titles 25-32 Recommended to Continue Without Change

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, 28-B, 29-A, 30-A and 32 should remain in law as written:

- Title 25, section 2806-A, subsection 10, relating to complaints, charges or accusations of misconduct at the Maine Criminal Justice Academy
- 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 255, subsection 1, relating to motor vehicle records when a protection order is in effect;
- 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 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, subsection1, relating to recorded images or audio produced by traffic surveillance cameras on a school bus;
- 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 2111, subsection 1, paragraph F relating to background check results received by the State Board of Nursing;
- Title 32, section 2571-A, subsection 1, paragraph relating to background check results received by the Board of Osteopathic Licensure for licensing through the Interstate Medical Licensure Compact; and
- Title 32, section 2599, relating to medical staff reviews and hospital reviews - osteopathic physicians

APPENDIX G

Summary of Public Employee Disciplinary Records Stakeholder Report

SUMMARY OF REPORT

PUBLIC EMPLOYEE DISCIPLINE RECORDS STAKEHOLDER WORKSHOP REPORT
Prepared by the Maine State Archives and New England First Amendment Coalition

On June 12, 2025, the Maine State Archives convened a stakeholder discussion on behalf of the Right to Know Advisory Committee to discuss a potential shift to a tiered retention and disclosure system of public employee disciplinary records. Attendees represented a range of state and local agencies, including the Maine State Police, the Maine State Archives, the Maine Education Association, as well as media and freedom of information organizations, including the Maine Freedom of Information Coalition, the Sun Journal, and the New England First Amendment Coalition.

ISSUES CONSIDERED

The main issues for consideration at the meeting were:

(1) The creation of a tiered system of record retention based on the "seriousness" of the misconduct.
   a. How would such tiers be defined? (i.e., financial loss, termination, etc.)
   b. Would definitions be universal across all agencies and employee roles?
   c. Who would determine what tier would apply to each action recorded?

(2) Whether the availability of these records is appropriately governed by the record retention schedule or whether it would be appropriate to limit the amount of time that such records are public pursuant to the Freedom of Access Act.

DISCUSSION

The group discussed a variety of concerns across agencies and vacillated on the question of whether or not a tiered system would be advantageous. Above all else, the group agreed that state agencies must clearly and consistently define key terms, including "discipline," "suspension," and "final agency action." Because the discipline may be defined differently between agencies, the same misconduct might become public record at one agency and not at another.

While there was consensus among the workshop attendees that defining key terms is a top priority, the group spent much of the meeting discussing arguments for and against a tiered system.

Arguments Against a Tiered System

- Concerns that a tiered system would be unnecessarily complicated when the goal is to simplify the process and create uniformity across agencies.
- Concerns that a tiered system could result in more employee grievances, as employees might be inclined to involve their unions and argue that a mandatory higher level of discipline, which would be subject to FOAA, is disproportionate to the offense.
- Concern that this system is particularly vulnerable to problems of favoritism, wherein the supervisor is responsible for disciplining an employee with whom he or she is close and treats serious misconduct as a lesser offense to circumvent disclosure requirements.
- Concern around the difficulties of determining the criteria for the tiers. In particular, there was resistance to making the disclosure metric the financial impact to the employee.
- Concerns regarding whether to treat differently the records of employees whose roles require certification or licensure. This would include the police and other law enforcement officers, as well as other public employees, such as bus drivers, who are required to have a special license.
    - The group concluded that a bright line rule regarding certifications would be overinclusive, as it would put people with vastly different levels of responsibility to the public in the same category for disciplinary purposes. Alternatively, an effective tiered system might consider, but not center around, whether an employee holds a position of trust, such as a schoolteacher or police officer, as opposed to a public works employee.

Arguments For a Tiered System

- Throughout the discussion, the group also considered the merits of a tiered system. The group generally agreed that different levels of misconduct warrant different treatment, as not all offenses require disclosure. A system more attuned to these nuances would mean minor infractions—some of which may be part of the learning process and professional growth in a particular job—would not follow someone for the rest of their career as a public employee.
- A tiered system might also better reflect the progressive discipline model employed by many state agencies. That is, only certain levels of disciplinary action would become public record, and public employees would only receive such discipline after repeated incidents of misconduct.
- A tiered system also balances important considerations of recruitment, retention, and employee privacy. It may, however, cause issues with retention once misconduct has occurred and employees are worried about their missteps being made public. A tiered system would help protect against that.

Other Considerations

- The State Police and Maine Education Association (MEA) were particularly concerned about issues of due process and privacy.
- The group briefly discussed whether the amount of time a record is available to the public should mirror the retention schedule. One attendee noted that Brady-Giglio protocols require law enforcement to retain certain materials forever for prosecutorial purposes, though such records may not be available to the public for as long.
- The group concluded that there is no strong argument in favor of retaining non-Brady-Giglio records that are no longer available to the public. Moreover, retaining non-Brady-Giglio records longer than they are subject to FOA seems to conflict with the general record retention schedule.

RECOMMENDATIONS

Further Consideration of Tiered System

While the workgroup did not explicitly endorse a two-tiered retention metric, consensus began to form around a system similar to the following:

- Tier 1: When there are sustained findings relating to higher levels of discipline, including but not limited to suspension, demotion and termination, records will be considered public in perpetuity.
- Tier 2: When there are sustained findings relating to any form of discipline outside the scope of Tier 1, records will be considered public for five years.
- Prior to a sustained finding for Tier 1 and Tier 2 offenses, records will not be public pursuant to FOAA.
  One significant concern regarding this model is the inability of the public to access documents related to reports of employee of misconduct that do not result in a sustained finding.

Development of Consistent Guidelines

- It is of critical importance to clearly and consistently define key terms, such as “discipline,” “suspension,” and “final agency action.”

Better Guidance on CBA Implications

- It is also important to note that a tiered retention system may conflict with collective bargaining agreements (CBAs), as some negotiated retention schedules are shorter than either of the proposed tiers. Accordingly, the proposed system must be explicit in addressing possible conflicts with CBAs.

APPENDIX H

February 7, 2025 Letter to Criminal Law Advisory Commission

STATE OF MAINE

RIGHT TO KNOW ADVISORY COMMITTEE

February 7, 2025

Criminal Law Advisory Commission
Via Email: Laura.Yustak@maine.gov

Re: Public employee disciplinary records

Dear Laura Yustak,

I am writing on behalf of the Right to Know Advisory Committee. To conduct its work this year, the Right to Know Advisory Committee formed several subcommittees, including the Public Employee Disciplinary Records Subcommittee. One of the issues this subcommittee considered was the retention of records that may be used to impeach a witness in a criminal case, so-called *Brady/Giglio* materials. The Subcommittee received comment from several representatives of law enforcement who explained that it can be challenging to identify what records represent *Brady/Giglio* materials, and they expressed a desire for further guidance on this issue. The Subcommittee was also advised that consistency in the handling of these materials is a goal of the Maine Chiefs of Police Association.

At its final meeting, the Right to Know Advisory Committee recommended asking the Criminal Law Advisory Commission to consider this issue to provide guidance regarding the types of public employee disciplinary records that would be considered *Brady/Giglio* materials, including examples if possible, and to make recommendations regarding how these materials should be retained by public employers. We request that the Commission share any guidance and recommendations it develops with the Judiciary Committee and the Right to Know Advisory Committee in 2025.

Thank you for your consideration of this request.

Sincerely,

The Honorable Erin Sheehan, Chair
Right to Know Advisory Committee

APPENDIX I

June 16, 2025 Letter from Judiciary Committee

STATE OF MAINE
ONE HUNDRED AND THIRTY-SECOND LEGISLATURE
COMMITTEE ON JUDICIARY

June 18, 2025

Dear Right to Know Advisory Committee,

We are writing to respectfully request that the Right to Know Advisory Committee (RTKAC) examine issues related to the Freedom of Access Act (FOAA) that were brought to our attention through several items of proposed legislation this year.

Public Records Requests

❖ LD 1484, *An Act Related to Public Access of Records of Certain Disciplinary Actions of Public Employees*, addressed a complicated issue that the RTKAC and the Judiciary Committee have each spent several years tackling: public access to public employee disciplinary records. As you know, under current law, complaints and accusations of misconduct involving state, county and municipal employees are confidential unless and until discipline is imposed, at which time the final written decision becomes a public record. 5 M.R.S. §7070(2)(E); 30-A M.R.S. §503(1)(B), §2702(1)(B). LD 1484 would have provided that a final written decision imposing discipline would only be publicly accessible if the discipline "is of a nature that imposes or results in financial disadvantage, including, but not limited to, termination, demotion or suspension without pay."

At the public hearing, the bill's proponents echoed concerns raised to the RTKAC's 2024 Subcommittee on Public Employee Disciplinary Records—*i.e.*, the current lack of a statutory definition of "discipline" for which a written record must be available to the public has led to inconsistency across government agencies regarding whether, for example, corrective memos and reprimands must be publicly accessible; the knowledge that minor performance issues may be publicly disclosed exacerbates public employee recruitment and retention issues; and the concern that disclosing less serious disciplinary matters to members of the public may enable those who wish to harass and embarrass public employees, particularly law enforcement officers and school personnel. By contrast, the bill's opponents emphasized that LD 1484 would dramatically narrow the disclosure of public employee disciplinary records in a way that not only limits government transparency and accountability but also prevents future employers, including other public agencies, from learning about certain types of misconduct before making employment decisions. Moreover, the Maine Association of Criminal Defense Lawyers

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observed that even discipline that does not involve a financial penalty may, if it implicates the credibility of a law enforcement officer, need to be disclosed to defense counsel for purposes of impeaching the officer's credibility as a matter of state and federal constitutional law.

Given these complex, competing considerations, the Judiciary Committee voted that LD 1484 ought not to pass and to request that the RTKAC consider the bill's proposal as it continues to examine the issues surrounding public access to public employee disciplinary records this year.

❖ LD 1788, *An Act to Strengthen the Freedom of Access Act by Categorizing Commercial Requesters*, proposed to require every person submitting a request for public records under FOAA to certify, on a form to be developed by each public agency or official, whether the request is a commercial request or a noncommercial request and whether the information received in response to the request "is likely to be produced pursuant to an ongoing judicial proceeding." Based on its assessment of the requester's intended use of the public record, the public body, agency or official would then be required to independently determine whether the request is "commercial" or "noncommercial" in nature. The new definitions proposed in the bill clarify that a request made "solely for the purpose of conducting scientific research" or by certain "representative[s] of news media" generally should not be considered commercial in nature. If it concludes that a request is commercial, the public body, agency of official would be authorized by LD 1788 both to charge a fee for the first two hours of staff time required to respond to the request and to establish a fee structure that exceeds the current statutory maximum fee of $25 per hour.

According to the sponsor LD 1788 is designed, in part, to mirror the federal Freedom of Information Act by requiring entities who seek access to public records for commercial purposes to pay more than members of the public who seek public records for noncommercial purposes. In addition, the sponsor designed the bill to deter an increasingly common but troubling practice by attorneys and pro se litigants who file FOAA requests as an alternative method of obtaining information that would be available during the discovery process as part of a civil or criminal proceeding. While the committee certainly understands the importance of these considerations, numerous questions remain, including: whether it is appropriate to categorize public records requests based on the intent of the person making the request or whether the Legislature should instead categorize certain types of requests — for example, a request to a registry of deeds for a list of all properties subject to a tax lien — as presumptively commercial; if the intent of the requester should be determinative, whether the language of the bill provides appropriate guidance regarding the types of requests that should be considered commercial; whether to limit the types of additional information that a public agency or official may seek on its certification form regarding the intent of the request; whether a person who requests a public record before deciding whether to initiate litigation should be required to disclose the potential for a future lawsuit when making the request; whether the Legislature should establish any parameters for the increased fees that a public entity may charge a commercial requester; and whether the Legislature should consider authorizing public entities to prioritize the processing of noncommercial public records requests over commercial public records requests.

Ultimately, the committee agreed with the Maine Press Association that these issues surrounding for-profit and litigation-related public records should be referred to the RTKAC for further examination as part of its ongoing work to address burdensome public records requests.

New Public Record Exception

❖ LD 1824, *An Act to Prohibit the Public Release of Information Regarding a Railroad Fatality*, proposed to exclude from the definition of "public record" a report of a law enforcement agency regarding an accident resulting in a fatality involving a railroad or railroad line and all records of communication between the law enforcement agency and a railroad company employee involved in that accident. The exclusion would apply only during the course of an investigation of the accident. The bill further proposed certain exceptions to the confidentiality of these reports and records.

At the work session on LD 1824, the committee determined that it was unclear whether the bill as drafted would be sufficiently narrowly tailored or whether it would pass the statutory balancing test set forth in 1 M.R.S. §434 that the Judiciary Committee uses when reviewing new public record exceptions.

Ultimately, the committee voted that LD 1824 ought not to pass and to request that the RTKAC examine and make recommendations regarding whether a new exception to the definition of "public record" is necessary for records related to an accident involving a railroad or railroad line that results in a fatality.

Executive Sessions

❖ LD 1399, *An Act to Allow Action Against a Person Violating the Confidentiality of an Executive Session of a Public Body or Agency*, proposed to prohibit any person who attends an executive session of a public body or agency from disclosing the substance of any matter discussed or any underlying facts or information related to the matter discussed during the executive session unless 3/5 of the members of the public body present and voting approve of the disclosure. The bill would have also established a process for investigating violations, which could result in a decision barring the person found to have violated the confidentiality of the executive session from participating in future executive sessions, having access to confidentiality information or having access to information or attending an executive session regarding a matter for which the person is determined to have a conflict of interest.

At the work session on LD 1399, the committee was surprised to learn that FOAA does not currently explicitly provide that discussions during executive sessions are confidential or delineate the parameters of that confidentiality. Nevertheless, the committee had numerous concerns regarding LD 1399's proposal for describing the scope of the confidentiality and the appropriate penalties for violating of that confidentiality, including: whether it is advisable to restrict a member of the public body who has disclosed sensitive information in the past from participating in future executive sessions, even though the member retains the authority to vote on issues discussed during the executive session; whether the same penalties should apply to a member of a public body who discloses information learned during an executive session and another person who is present at the executive session and who may have independent knowledge of the facts underlying the issue being discussed (for example, the parent of a student facing an expulsion hearing); and whether investigative proceedings involving violating the confidentiality of executive sessions should themselves be conducted in investigative sessions.

Ultimately, the committee voted that LD 1399 ought not to pass and to request that the RTKAC examine and make recommendations regarding the best way to ensure that the information members of a public body learn during an executive session remains confidential to the extent that confidentiality is appropriate.

Thank you very much for your dedication to freedom of access issues in the State. We look forward to your recommendations related to these issues when we receive the RTKAC annual report this coming January.

Sincerely,

Sen. Anne M. Carney
Senate Chair

Rep. Amy D. Kuhn
House Chair

c: Joint Standing Committee on the Judiciary

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APPENDIX J

September 25, 2025 Letter from Senator Rotundo

Peggy Rotundo
Senator, District 21

THE MAINE SENATE
132nd Legislature

3 State House Station
Augusta, Maine 04333

September 25, 2025

To the Members of the Right to Know Advisory Committee:

I am writing to ask that the Right to Know Advisory Committee consider a serious issue related to school hirings that has come up in my district and is not a unique problem.

Issue
The issue involves how educators and schools share information about educators' investigations related to sexual misconduct, including investigations that are never completed.

Specific Circumstance
This issue was raised to me by a constituent who personally experienced sexual harassment in the past by an educator who now works at her child's school. When she realized the person who had harassed her was working at her daughter's school, she was worried. After some brief online research, she discovered that he had left another school district during another sexual misconduct investigation. This experience made her concerned about the lack of accountability and information sharing between school districts about sexual misconduct investigations of educators.

Existing Maine Statutes and Rules
There are existing statutes intended to address this issue, and they include responsibilities of schools and the Department of Education and rights of the employee. Currently, school districts are required to notify the Department of Education if an employee leaves the district while the employee is being investigated for conduct that could jeopardize their certification status, including conduct that involves alcohol, illegal drugs, physical abuse, emotional abuse, inappropriate contact between a credentialed holder and a student, stalking or similar behavior that endangers the health, safety or welfare of a student. See 20-A M.R.S. §§13025,13026.

A school department is also required to inform the department if an investigation results in findings of wrongdoing, and the employee is disciplined, suspended, or terminated because of a covered investigation in which the school entity determined that a student's health, safety, or welfare was endangered. *Id*.

Possible Remedy
While these safeguards are important, some school employees subject to investigation have escaped notice, moving from one school district to another. A possible way to address this problem is to require applicants to provide notice to potential school employers if the applicant has been subject to investigation by a former school employer. It has come to my attention that the Committee may consider similar issues regarding the hiring of other public employees, and I would respectfully ask that you consider these school hirings, too. Information about states who have already passed similar legislation and model legislation can be found here: https://enoughabuse.org/get-vocal/laws-by-state/screening-school-employees/

Appropriations and Financial Affairs Committee
*State House (207) 287-1515 * Fax (207) 287-1585*
*Peggy.Rotundo@legislature.maine.gov * legislature.maine.gov/senate*

Peggy Rotundo
Senator, District 21

THE MAINE SENATE
132nd Legislature

3 State House Station
Augusta, Maine 04333

Here is a list of potential proposed legislative changes we are hoping you will consider:

- Requiring applicants to disclose any current or previous investigations, which is addressed at length in the above model legislation
- Requiring schools to ask the Department about any current or previous investigations, again addressed at length in the above model legislation
- Requiring schools to begin and complete these investigations as soon as they have notice, even if the educator leaves their employment.
- If the above recommendations are implemented, a report back from the DOE to your Committee and the Legislative Joint Standing Committee on Education and Cultural Affairs to see if these changes are increasing the number of schools participating in informed hiring practices
- Reviewing potential expansions to our current law barring non disclosure agreements to include NDAs initiated by educators investigated for sexual misconduct
- Reviewing any provisions that might potentially prevent disclosure of these personnel records such as Title 1 MRSA, Chapter 13

I appreciate the expertise and thoughtfulness of the Right to Know Committee in considering my request. I hope that the Committee has time to take up the issue and make recommendations to strengthen processes and safeguards to ensure that school employers, school employees and the department are working together to ensure the safety of Maine students in your communities. Thank you for your time.

Sincerely yours,

Peggy Rotundo
Senate District 21

Appropriations and Financial Affairs Committee
*State House (207) 287-1515 * Fax (207) 287-1585*
*Peggy.Rotundo@legislature.maine.gov * legislature.maine.gov/senate*

APPENDIX K

Questions Sent to Stakeholders Regarding Public Access to Disciplinary Records of Public Employees

Sent Friday, November 7, 2025

Good afternoon_____,

I am writing on behalf of the Right to Know Advisory Committee, an on-going advisory council, created by Public Law 2005, chapter 631, with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's Freedom of Access laws. The Right to Know Advisory Committee was created to serve as a resource and advisor about Maine's Freedom of Access laws and may make recommendations for changes in statutes to improve public access to records and proceedings and to maintain the integrity of the Freedom of Access laws. Each year, the Committee assembles a select group of subcommittees dedicated to further examination of topics requested of the Advisory Committee for consideration.

This year, the Right to Know Advisory Committee has reconvened a subcommittee dedicated to further exploration of issues related to public access to disciplinary records of public employees. As part of its work this interim, the subcommittee has asked me to contact the [name of organization] to see if you would be willing to share your perspective and the perspective of the public employees your organization serves on the following topics presented for consideration this year.

REQUESTED PERSPECTIVE

At the subcommittee's November 6, 2025 meeting (recording here), members heard from a representative of the Maine State Police to learn about the Maine State Police's Office of Professional Standards policy requiring the completion of any misconduct investigation of an employee to the point of completion, even if an employee who is the subject of the investigation has departed from their employment with the Maine State Police prior to the conclusion of the investigation (such as a resignation or a retirement).

QUESTION 1: From the perspective of your organization and the public employees your organization represents, please share some thoughts about this policy**.** How would your organization or its members feel about a policy requiring the completion of any misconduct investigations of the employees that your organization represents even if an employee who is the subject of the investigation has left their position?

QUESTION 2: From the perspective of your organization and the public employees your organization represents, would it be beneficial for state law to establish uniform definitions for the following terms: "discipline," "suspension," and "final agency action?"

QUESTION 3: From the perspective of your organization and the public employees your organization represents, is employee misconduct best handled through credentialing regulations (e.g., a governing body issuing a suspension of an employee's certification after findings of misconduct) or between an employee and their direct supervisor(s)?

If your organization may be willing to provide any written comments or feedback in response to these questions, please submit any written comments via email to Advisory Committee staff at XXXX@legislature.maine.gov **by Friday, November 14, 2025 at 5:00PM**. If you have any questions, please do not hesitate to contact Advisory Committee staff via email or call 207-287-1670.

Thank you for your time and consideration of this request.

APPENDIX L

Response to Questions Sent to Stakeholders Regarding Public Access to Disciplinary Records of Public Employees – Part 1

Response Received from the Maine School Management Association (p. 1 of 2)

QUESTION 1: From the perspective of your organization and the public employees your organization represents, please share some thoughts about this policy. How would your organization or its members feel about a policy requiring the completion of any misconduct investigations of the employees that your organization represents even if an employee who is the subject of the investigation has left their position?

The Maine School Management Association appreciates the intent of the Maine State Police policy and its desire for accountability and transparency throughout the hiring process. However, we believe that it could pose some unique challenges for schools.

While schools are fully supportive of any effort to prevent employee misconduct and protect students, districts face significant challenges in ensuring a comprehensive, fair investigation in situations when an employee resigns before an investigation has begun or is completed. First, a district cannot force an employee who has left the district to comply with an investigation and respond to questions or requests for information. Districts also do not have any power in these situations to discipline a former employee for not cooperating. This could result in a due process issue, with a district ultimately completing an investigation without being able to be truly fair to all sides.

With the district having little authority in these situations, we believe that these kinds of misconduct investigations may be best completed at the state level. Currently, we feel that 20-A MRSA §13025 contemplates these challenges and largely addresses these issues. It requires that a "school entity shall notify the department immediately if a credential holder who is the subject of a covered investigation leaves the school entity's employment for any reason prior to the conclusion of the covered investigation. A school entity shall notify the department immediately if a credential holder is disciplined, suspended or terminated as a result of a covered investigation in which the school entity determined that a student's health, safety or welfare was endangered."

The DOE must notify school districts of any investigations that it takes up, and, if receiving a notice of a covered investigation by a local school district, "the department shall notify the superintendent or chief administrative officer of all other school entities for which the credential holder works, as reported to the department under section 13026, that the credential holder was disciplined, suspended or terminated as a result of a covered investigation, or that the credential holder left employment prior to completion of a covered investigation. If a credential holder provides consent as part of that credential holder's application for employment with a school entity, the department shall notify the superintendent or the chief administrative officer of that school entity if that credential holder left employment with a school entity prior to the completion of a covered investigation of that credential holder."

We believe that for the vast majority of cases, this process, if appropriately followed, will provide enough safeguards against any employee misconduct. However, we would advocate for two solutions that we believe would strengthen this process:

- We understand, based on Sen. Rotundo's letter, that in some situations (such as if a credential holder leaves before an investigation begins), this process may not be sufficient. We suggest that the legislature could amend §13025 to instead require a school entity to notify the department immediately if a credential holder **who is facing allegations that could be subject of a**

covered investigation leaves the school entity's employment for any reason prior to the conclusion of the covered investigation. This would ensure that in any case of potential misconduct – even if an investigation had not yet begun before an employee left the district – the department would be notified.

- In addition, many districts already include a question on their hiring forms asking if a potential employee has ever resigned over allegations and/or an investigation over misconduct from a previous employer. An example from one school district reads: *"Have you ever failed to be rehired, been asked to resign a position, resigned to avoid termination or investigation, or been terminated from employment? If yes, explain."*

We believe that including this language (or language similar to it) universally on hiring forms would provide another level of safeguard. As an association, MSMA would be happy to work with your committee to ensure all districts adopt such language on their hiring forms.

We believe that these two steps would protect students, ensure accountability, and strengthen the investigation process outlined in Maine statute.

QUESTION 2: From the perspective of your organization and the public employees your organization represents, would it be beneficial for state law to establish uniform definitions for the following terms: "discipline," "suspension," and "final agency action?"

Our only concern regarding this question would be how "discipline" would be defined in state law. In many local collective bargaining agreements, "discipline" is defined in a particular manner, and a definition in state law contradictory to that could create ambiguity and confusion in particular districts.

QUESTION 3: From the perspective of your organization and the public employees your organization represents, is employee misconduct best handled through credentialing regulations (e.g., a governing body issuing a suspension of an employee's certification after findings of misconduct) or between an employee and their direct supervisor(s)?

We believe that for the overwhelming majority of disciplinary issues, discipline is best handled at the local level. One example would be tardiness: if an employee is repeatedly late to work, this kind of situation is clearly best handled at the local district level, instead of through credentialing regulations. Collective bargaining agreements contemplate these types of cases and what discipline should be administered.

However, we fully believe that if an issue involves allegations of severe employee misconduct (such as those described in 20-A MRSA §13025), it is clearly serious enough that other potential employers should be aware, and the Maine Department of Education should be looking at whether the credential holder maintains their certification. We think the investigation process outlined in §13025 largely ensures that the state is made aware of such situations, and we offer suggestions to strengthen that process in our response to Question 1.

Response Received from the Maine Municipal Association (p. 1 of 1)

Thank you so much for the opportunity to provide MMA's perspective and the data requested by the subcommittee to make informed policy decisions.

MMA is happy to collaborate on a survey to our members to get their perspective. However, the short timeline indicated with this request would make it difficult to get the type of qualitative data needed for the broad perspective questions being asked.

Since this data is part of the committee's ongoing work efforts, it would be ideal if our Legislative Policy Committee could weigh in on this request during their next scheduled meeting on January 15, 2026. If that timeline doesn't work for the committee, we're happy to work with you to come up with some sort of compromise that can fit the needs of the committee and the provide the desired qualitative results.

Thank you again for reaching out with your request.

Response Received from the Maine Education Association (p. 1 of 1)

QUESTION 1: From the perspective of your organization and the public employees your organization represents, please share some thoughts about this policy**.** How would your organization or its members feel about a policy requiring the completion of any misconduct investigations of the employees that your organization represents even if an employee who is the subject of the investigation has left their position?

Answer: The MEA would vigorously oppose any such requirement. First, very often the incentive for a member to separate employment is to bring an investigatory process to a close. Many people facing a disciplinary process would rather leave just to avoid going through the time and toll it takes to complete. Others simply want to avoid the perceived embarrassment of having uncomfortable issues aired in front of others, even if they feel they are in the right. Frequently, in such cases, the separation comes in the form of (1) a resignation, (2) some severance payment, and (3) removal of the relevant records from the personnel file. The process envisioned here would thus make settlements much harder to achieve, since the member would have to go through the investigatory process anyway. Second, from an organizational standpoint, we would likely be compelled to expend considerable resources pursuing a process with no immediate, practical benefit. Third, it is hard to envision what legal status such a completed investigation would maintain in these scenarios. Could the person's new employer discover it and then threaten their new position? The questions alike this are bottomless. Finally, this body will struggle to define what a "misconduct" investigation is, as a threshold matter. It is easy to envision conflict with Employers over the characterization of the action – and who would resolve that dispute?

QUESTION 2: From the perspective of your organization and the public employees your organization represents, would it be beneficial for state law to establish uniform definitions for the following terms: "discipline," "suspension," and "final agency action?"

Answer: No. Every situation that enters the disciplinary process is inherently different, and thus those definitions are better set by adjudicators in decisional law based on the facts of each case. For this reason, it is highly likely that this body – or the Legislature – will struggle to reach agreement over these definitions, because by their very nature they are meant to encompass an incredibly vast range of conduct. And, when the Legislature cannot reach agreement it very often reduces definitions to very broad concepts – which will have to be interpreted by adjudicators anyway.

QUESTION 3: From the perspective of your organization and the public employees your organization represents, is employee misconduct best handled through credentialing regulations (e.g., a governing body issuing a suspension of an employee's certification after findings of misconduct) or between an employee and their direct supervisor(s)?

Answer: Allegations of employee misconduct in an organized workplace should be resolved, as they have for nearly 100 years, through the collective bargaining agreement. The parties to the CBA make the mutual decision to have disputes resolved in this way and there is no reason for the State to impose itself in this process.

Response Received from the Maine Sheriffs Association (10 pages total)

Please see responses from county sheriffs in the following attachment,
compiled by the Maine Sheriffs Association.

APPENDIX M

Response to Questions Sent to Stakeholders Regarding Public Access to Disciplinary Records of Public Employees – Part 2

#1

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Monday, November 10, 2025 8:26:07 PM
Last Modified:	Monday, November 10, 2025 8:42:56 PM
Time Spent:	00:16:48
IP Address:	104.28.39.138

Page 1: Right To Know Advisory Committee (RTKAC)

Q1

Name of person completing this survey:

Sheriff Troy Morton

Q2

From the perspective of your organization and the public employees your organization represents, please share some thoughts about this policy. How would your organization or its members feel about a policy requiring the completion of any misconduct investigations of the employees that your organization represents even if an employee who is the subject of the investigation has left their position?

Our office currently completes all investigations started , however union CBAs and uncooperative witnesses leaving may impact the completion and outcome.

Q3

From the perspective of your organization and the public employees your organization represents, would it be beneficial for state law to establish uniform definitions for the following terms: “discipline,” “suspension,” and “final agency action?”

Currently union CBAs describe these definitions. I don’t believe our profession needs a law to define these terms.

Q4

From the perspective of your organization and the public employees your organization represents, is employee misconduct best handled through credentialing regulations (e.g., a governing body issuing a suspension of an employee’s certification after findings of misconduct) or between an employee and their direct supervisor(s)?

Completely removing an agency or agency head’s ability to manage its stuff is a ridiculous mindset.

Utilizing a restrictive model does not account for the various circumstances that may arise in any situation.

I do believe that in cases of termination or criminal conduct certifications should be examined.

#2

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Tuesday, November 11, 2025 5:01:12 AM
Last Modified:	Tuesday, November 11, 2025 5:25:33 AM
Time Spent:	00:24:21
IP Address:	76.179.17.243

Page 1: Right To Know Advisory Committee (RTKAC)

Q1

Name of person completing this survey:

Bill King

Q2

From the perspective of your organization and the public employees your organization represents, please share some thoughts about this policy. How would your organization or its members feel about a policy requiring the completion of any misconduct investigations of the employees that your organization represents even if an employee who is the subject of the investigation has left their position?

I think it is overreach. If an employee leaves an organization in the midst of an administrative investigation, I question if the organization even has the authority to continue an investigation.
It is incumbent upon other agencies to conduct a thorough background investigation and by doing so, they should discover that the employee left under the cloud of an administrative investigation. This will require the organization to have an iron clad disclosure form that the prospective employee must fill out.
I would recommend this committee craft legislation that protects an agency when they disclose something about a former employee. Our county policy is to provide the date of hire and the date when they left. Normally, a background investigator will ascertain if the employee was not good when they ask the question, "is Johnny eligible for re-hire?"

Q3

From the perspective of your organization and the public employees your organization represents, would it be beneficial for state law to establish uniform definitions for the following terms: “discipline,” “suspension,” and “final agency action?”

Absolutely! At present, agencies may only report the "final discipline" to requesting media or other agencies. And usually, the final discipline" is crafted so not many details are revealed.
I have disciplined deputies, and they have appealed the decision, which is usually a suspension. My legal counsel related that I cannot disclose anything during the appeal process, which includes an arbitration hearing. In other words, it could take months if not years to get a final disposition on a disciplinary matter.
I currently have a non-law enforcement staffer that is appealing a suspension because of the "wording" of the suspension letter!

Q4

From the perspective of your organization and the public employees your organization represents, is employee misconduct best handled through credentialing regulations (e.g., a governing body issuing a suspension of an employee's certification after findings of misconduct) or between an employee and their direct supervisor(s)?

The challenge of leaving discipline up to a credentialing agency (like the MCJA) is that the credentialing agency assumes a role of 'above' the individual agency.
In the past, I thought for sure the MCJA would take some definitive action against an employee only to be disappointed. Discipline should remain with the individual agency.

#3

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Tuesday, November 11, 2025 10:44:38 AM
Last Modified:	Tuesday, November 11, 2025 11:29:59 AM
Time Spent:	00:45:20
IP Address:	216.195.133.2

Page 1: Right To Know Advisory Committee (RTKAC)

Q1

Name of person completing this survey:

Sheriff Todd Brackett, Lincoln County

Q2

From the perspective of your organization and the public employees your organization represents, please share some thoughts about this policy. How would your organization or its members feel about a policy requiring the completion of any misconduct investigations of the employees that your organization represents even if an employee who is the subject of the investigation has left their position?

If I understand the question? We currently have policy in place that requires the completion of misconduct investigations of our employees. The policy currently doesn't change if the subject of the investigation leaves the agency during the investigation. The investigation would be completed.

Q3

From the perspective of your organization and the public employees your organization represents, would it be beneficial for state law to establish uniform definitions for the following terms: “discipline,” “suspension,” and “final agency action?”

I see no immediate benefit to defining these terms in statute, Webster has done a pretty good job, for the first two. Final agency action was clarified in recent legislation appropriately requiring more detail regarding the circumstance leading to discipline. Thant seem to be working pretty well thus far.

Q4

From the perspective of your organization and the public employees your organization represents, is employee misconduct best handled through credentialing regulations (e.g., a governing body issuing a suspension of an employee’s certification after findings of misconduct) or between an employee and their direct supervisor(s)?

No, in general disciplinary matters should be left between the employee and management. There is ample law and case law guidance in the the application of just cause discipline including well established appeals processes outlined by collective bargaining agreement and the Maine Labor Relations Board. Credentialling regulations should be left to criminal and serious ethical matters as presented in each individual situation. One size fits all through an outside credentialing body in all cases is unnecessary.

#4

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Wednesday, November 12, 2025 7:55:33 AM
Last Modified: Wednesday, November 12, 2025 8:07:14 AM
Time Spent: 00:11:41
IP Address: 72.73.127.90

Page 1: Right To Know Advisory Committee (RTKAC)

Q1

Name of person completing this survey:

Eric Samson

Q2

From the perspective of your organization and the public employees your organization represents, please share some thoughts about this policy. How would your organization or its members feel about a policy requiring the completion of any misconduct investigations of the employees that your organization represents even if an employee who is the subject of the investigation has left their position?

All misconduct or internal investigations should be completed but we need to recognize due process. If an employee leaves employment they are not subject to Garity which may affect your ability to complete or through investigate the misconduct.

Q3

From the perspective of your organization and the public employees your organization represents, would it be beneficial for state law to establish uniform definitions for the following terms: “discipline,” “suspension,” and “final agency action?”

Yes

Q4

From the perspective of your organization and the public employees your organization represents, is employee misconduct best handled through credentialing regulations (e.g., a governing body issuing a suspension of an employee’s certification after findings of misconduct) or between an employee and their direct supervisor(s)?

Each incident would be based on the severity, some issues are appropriately addressed by supervisory staff and others call for administrative oversight or action.

#5

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Wednesday, November 12, 2025 12:37:31 PM
Last Modified:	Wednesday, November 12, 2025 1:01:03 PM
Time Spent:	00:23:31
IP Address:	71.254.110.178

Page 1: Right To Know Advisory Committee (RTKAC)

Q1

Name of person completing this survey:

Sheriff Dale P. Lancaster

Q2

From the perspective of your organization and the public employees your organization represents, please share some thoughts about this policy. How would your organization or its members feel about a policy requiring the completion of any misconduct investigations of the employees that your organization represents even if an employee who is the subject of the investigation has left their position?

It places the organization it a precarious position. You are asking for an investigation when the agency has no leverage over the employee. And the employee has no obligation to answer any questions, or meet with the employer

Q3

From the perspective of your organization and the public employees your organization represents, would it be beneficial for state law to establish uniform definitions for the following terms: “discipline,” “suspension,” and “final agency action?”

On the face of the question, defining those terms universally would be helpful. Without the Union at the table for the discussion, the definitions become adversarial.

Q4

From the perspective of your organization and the public employees your organization represents, is employee misconduct best handled through credentialing regulations (e.g., a governing body issuing a suspension of an employee’s certification after findings of misconduct) or between an employee and their direct supervisor(s)?

employee and direct supervisor. You first have to define misconduct. I also do not believe that credentialing regulations would capture all of the nuances of the final decision an administrator has to consider.

#6

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Thursday, November 13, 2025 9:06:46 AM
Last Modified:	Thursday, November 13, 2025 9:09:35 AM
Time Spent:	00:02:48
IP Address:	107.115.108.58

Page 1: Right To Know Advisory Committee (RTKAC)

Q1

Name of person completing this survey:

Kevin Joyce

Q2

From the perspective of your organization and the public employees your organization represents, please share some thoughts about this policy. How would your organization or its members feel about a policy requiring the completion of any misconduct investigations of the employees that your organization represents even if an employee who is the subject of the investigation has left their position?

I have no opinion at this time. I believe that there are some advantages and some disadvantages.

Q3

From the perspective of your organization and the public employees your organization represents, would it be beneficial for state law to establish uniform definitions for the following terms: “discipline,” “suspension,” and “final agency action?”

Yes

Q4

From the perspective of your organization and the public employees your organization represents, is employee misconduct best handled through credentialing regulations (e.g., a governing body issuing a suspension of an employee’s certification after findings of misconduct) or between an employee and their direct supervisor(s)?

Yes

#7

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Thursday, November 13, 2025 9:49:01 AM
Last Modified:	Thursday, November 13, 2025 10:03:43 AM
Time Spent:	00:14:42
IP Address:	64.222.64.202

Page 1: Right To Know Advisory Committee (RTKAC)

Q1

Name of person completing this survey:

Scott Nichols

Q2

From the perspective of your organization and the public employees your organization represents, please share some thoughts about this policy. How would your organization or its members feel about a policy requiring the completion of any misconduct investigations of the employees that your organization represents even if an employee who is the subject of the investigation has left their position?

If you have an employee resign in the middle of an investigation of misconduct. You should finish the investigation and submit the findings to the academy board.

Q3

From the perspective of your organization and the public employees your organization represents, would it be beneficial for state law to establish uniform definitions for the following terms: “discipline,” “suspension,” and “final agency action?”

Yes, on the surface, this sounds okay; however, I am concerned about unintended consequences regarding minor violations of policy, which should be considered training issues, not discipline.

Q4

From the perspective of your organization and the public employees your organization represents, is employee misconduct best handled through credentialing regulations (e.g., a governing body issuing a suspension of an employee’s certification after findings of misconduct) or between an employee and their direct supervisor(s)?

It depends on the level of misconduct. If it is a criminal act, that should be forwarded to the academy for credentials. However, non-criminal misconduct should be handled within the agency.

#8

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Friday, November 14, 2025 11:04:35 AM
Last Modified:	Friday, November 14, 2025 11:08:00 AM
Time Spent:	00:03:25
IP Address:	209.222.212.50

Page 1: Right To Know Advisory Committee (RTKAC)

Q1

Name of person completing this survey:

Scott A. Kane

Q2

From the perspective of your organization and the public employees your organization represents, please share some thoughts about this policy. How would your organization or its members feel about a policy requiring the completion of any misconduct investigations of the employees that your organization represents even if an employee who is the subject of the investigation has left their position?

I feel once they have left an organization, that should end the investigation unless the misconduct is a crime

Q3

From the perspective of your organization and the public employees your organization represents, would it be beneficial for state law to establish uniform definitions for the following terms: “discipline,” “suspension,” and “final agency action?”

Yes

Q4

From the perspective of your organization and the public employees your organization represents, is employee misconduct best handled through credentialing regulations (e.g., a governing body issuing a suspension of an employee’s certification after findings of misconduct) or between an employee and their direct supervisor(s)?

Between the employee and the direct supervisors

#9

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Friday, November 14, 2025 10:20:47 AM
Last Modified:	Friday, November 14, 2025 3:19:27 PM
Time Spent:	04:58:40
IP Address:	107.161.158.133

Page 1: Right To Know Advisory Committee (RTKAC)

Q1

Name of person completing this survey:

Anonymous

Q2

From the perspective of your organization and the public employees your organization represents, please share some thoughts about this policy. How would your organization or its members feel about a policy requiring the completion of any misconduct investigations of the employees that your organization represents even if an employee who is the subject of the investigation has left their position?

Completion of an investigation without any leverage to require the employee to corporate or answer questions would be difficult if not impossible, depending on the specific incident. It seems to be to make more sense for there to be some repercussion for an employee that leaves employment mid-investigation. Maybe there is a requirement for an agency to report when this happens, and an employee's certificate is suspended.

Q3

From the perspective of your organization and the public employees your organization represents, would it be beneficial for state law to establish uniform definitions for the following terms: “discipline,” “suspension,” and “final agency action?”

No, I don't see a need for this.

Q4

From the perspective of your organization and the public employees your organization represents, is employee misconduct best handled through credentialing regulations (e.g., a governing body issuing a suspension of an employee’s certification after findings of misconduct) or between an employee and their direct supervisor(s)?

The answer to this question depends on the conduct being alleged. If the conduct is serious in nature, the ability to pull an employee's certificate is important to restrict someone's ability to simply move to another agency. If the conduct is minor in nature, it should remain within the organization.

APPENDIX N

Recommended Legislation to Amend Title 20-A, Section 13025, Subsection 3 and 4, Paragraph B

DRAFT Legislation Proposed by Public Employee Disciplinary Records Subcommittee
Right to Know Advisory Committee
November 2025

Sec. 1. 20-A MRSA §13025, sub-§3 is amended to read:

3. Duties of school entities. A school entity shall notify the department immediately if a credential holder who is the subject of a covered investigation leaves the school entity's employment for any reason prior to the conclusion of the covered investigation or if a credential holder that is credibly alleged to have engaged in misconduct that may lead to a covered investigation leaves the school entity's employment for any reason. A school entity shall notify the department immediately if a credential holder is disciplined, suspended or terminated as a result of a covered investigation in which the school entity determined that a student's health, safety or welfare was endangered. The school entity shall provide to the department any final report produced in support of the school entity's decision to discipline, suspend or terminate the credential holder. The credential holder who is the subject of the report may submit to the department a written rebuttal to the report. The written rebuttal must be placed in the department's investigative file.

Sec. 2. 20-A MRSA §13025, sub-§4, ¶B is amended to read:

B. Immediately upon receipt from a school entity of notification pursuant to subsection 3 of the discipline, suspension or termination of a credential holder, ~~or~~ the leaving of employment by a credential holder prior to the completion of a covered investigation of that credential holder~~,~~ or the leaving of employment by a credential holder that is credibly alleged to have engaged in misconduct that may lead to a covered investigation, the department shall notify the superintendent or chief administrative officer of all other school entities for which the credential holder works, as reported to the department under section 13026, that the credential holder was disciplined, suspended or terminated as a result of a covered investigation, or that the credential holder left employment prior to completion of a covered investigation. If a credential holder provides consent as part of that credential holder's application for employment with a school entity, the department shall notify the superintendent or the chief administrative officer of that school entity if that credential holder left employment with a school entity prior to the completion of a covered investigation of that credential holder.

SUMMARY

This draft amends the laws related to investigations of credentialed educators to clarify that a school is required to notify the Department of Education if a credential holder that is alleged to have engaged in misconduct that could lead to an investigation leaves the school entity's employment for any reason.

APPENDIX O

Letter to Maine School Management Association

STATE OF MAINE

RIGHT TO KNOW ADVISORY COMMITTEE

Eric Waddell, Executive Director
Maine School Management Association
49 Community Drive
Augusta, Maine 04330

Dear Mr. Waddell:

As you know, the Right to Know Advisory Committee this year reviewed issues related to the hiring of credentialed educators and the sharing of information between the Department of Education and school districts about applicants' past misconduct. The issue was brought to the Committee's attention by a letter from Senator Rotundo dated September 25, 2025. Upon receipt of the letter, the full Right to Know Advisory Committee referred the issue to the Public Employee Disciplinary Records Subcommittee for further review.

The Public Employee Disciplinary Records Subcommittee had extensive discussions about Senator Rotundo's letter and solicited input from various stakeholders, including Maine School Management Association. Among MSMA's comments shared with the Subcommittee was an offer to work with the Committee to ensure that school districts are asking questions to applicants about whether the applicant had ever left a position due to an investigation of misconduct. The Subcommittee voted unanimously to recommend that the full Committee take MSMA up on this offer, and the full Right to Know Advisory Committee unanimously supported this recommendation.

The Right to Know Advisory Committee kindly requests that Maine School Management Association encourage schools to, as a matter of course, include in their hiring forms a question to applicants about whether they have previously left employment due to an investigation of alleged misconduct or been the subject on an investigation generally. The Committee understands that many schools already ask a question of this nature during the hiring process, but the Committee supports wider adoption of this practice to avoid situations like the one described in Senator Rotundo's letter.

The Committee is grateful for MSMA's collaboration on this matter and for your input on this complex issue.

Sincerely,

Senator Anne Carney
Chair, Right to Know Advisory Committee

APPENDIX P

November 6, 2025 Letter to Senator Moore

STATE OF MAINE

RIGHT TO KNOW ADVISORY COMMITTEE

November 6, 2025

Senator Marianne Moore
3 State House Station
Augusta, Maine 04333

Dear Senator Moore:

The Right to Know Advisory Committee referred your letter to the Burdensome FOAA Requests Subcommittee, which focuses on issues not unlike those raised in your letter. The subcommittee has had extensive discussions and has put forth recommendations regarding the FOAA fee structure and solutions for burdensome repeated requests. After discussion among both the subcommittee and the full Right to Know Advisory Committee, we wish to inform you, and by extension, your constituent, of the following:

In the last five years, Title 1, section 408-A has undergone several changes related to document fees. Public Law 2021, chapter 313 established the maximum per-page copy fee at 10 cents per standard black and white copy of a record and Public Law 2021, chapter 375 raised the allowable hourly rate for staff time from $15 after the first hour to $25 after the second hour. Public Law 2023, chapter 155 further amended that section to require an agency to inform the requestor before proceeding if the estimated cost of the request will exceed $50 to align with the 2021 change to the hourly rate.

More recently, the Legislature enacted Public Law 2025, chapter 175, which went into effect on September 24, 2025 and allows a body or agency to seek protection in court from *a series of requests* that are unduly burdensome or oppressive. The same law also extends the time period in which an agency may file for an action of protection from within 30 days of receipt of the request to within 60 days of receipt of the request or from *the date on which the body or agency notifies the requestor that the series of requests is unduly burdensome or oppressive.*

The Committee is very familiar with the issues described in your letter—all of the above changes came as the result of recommendations of the Right to Know Advisory Committee and its subcommittees. Currently, the Burdensome FOAA Requests Subcommittee continues to examine ways to reduce burden on responding agencies and entities, and the full Right to Know Advisory Committee as well as its other subcommittees, such as the Technology Subcommittee and the Public Employee Disciplinary Records Subcommittee, work with many stakeholders to address some of the underlying issues related to your letter and to make recommendations for

improvements to the many aspects of the FOAA process, both for requestors and for responding agencies.

With many of the changes to the fee structure becoming effective relatively recently and considering the ongoing work of the Committee and subcommittees, it is the position of the Committee that the fee structure and process for protection from series of requests should not be revisited until more time has passed and the processes have been regularly practiced in the field. However, if you or your constituent have specific feedback about the recent changes, the subcommittee would welcome further correspondence and discussion. Moreover, the Committee is open to revisiting the fee structure in the future—perhaps during its next convening in 2026—should additional issues come to our attention.

Thank you for your correspondence.

Sincerely,

Senator Anne Carney
Chair, Right to Know Advisory Committee

APPENDIX Q

Draft Letter to Maine County Commissioner's Association

STATE OF MAINE

RIGHT TO KNOW ADVISORY COMMITTEE

XX XX, 2025

Lauren Haven
Maine County Commissioners Association
4 Gabriel Drive, Suite 2
Augusta, Maine 04330
Via email: lauren.haven@mainecounties.org

Dear Lauren Haven:

Over the past several years, the Right to Know Advisory Committee (RTKAC) has considered the challenges of burdensome Freedom of Access Act (FOAA) requests. This year RTKAC formed a subcommittee on technology to explore how technology interacts with the FOAA. The Technology subcommittee became specifically interested in exploring how technology may assist state agencies, counties, municipalities and school districts fulfill FOAA requests. Simultaneously, the Burdensome FOAA Requests subcommittee was also interested if technology can reduce the burden on public access officers. As such, the Technology subcommittee dedicated its second meeting on October 27, 2025 to begin gathering information.

Given our subcommittees' time constraints, we were unable to reach you during this interim to learn more about the processes at the county level. The subcommittees, however, remain interested in gathering information on how counties use technology to fulfill FOAA requests. To better understand which technologies are available to counties, as well as which technologies are used to respond to FOAA requests, the Technology subcommittee and the Burdensome Requests subcommittee request that the Maine County Commissioners Association distribute a survey to its members. The goal of the survey is to use the information collected as a springboard for the 21st RTKAC to further explore how technology may assist counties in fulfilling FOAA requests.

The subcommittees request the Maine County Commissioners Association return, by July 1, 2026, your member organizations' responses to the following questions. **Please note that information provided to the subcommittees in response to this survey will be distributed to all Right to Know Advisory Committee members and is public information.**

Requested Information

1. Detail the technology currently used by the county to retain records and/or respond to FOAA requests. Please include the technologies, referencing specific software/platforms/applications (e.g., Microsoft 365, Google Vault, etc.) used for: 1) retaining records; 2) searching for records; 3) reviewing records; and 4) distributing records.

    a. Who determines the technology used in the county? What factors contribute to the decision-making process?

    b. How much does this technology cost?

2. Describe the ways in which the county uses that technology to fulfill FOAA requests. Elaborate on the technology used, when it is used, and who uses it (i.e., is this person trained in the FOAA process?). If technology is not used to fulfill FOAA requests, describe the factors that contributed to the decision not to use technology for fulfilling FOAA requests and how FOAA requests are currently fulfilled.

3. Detail any challenges, potential or realized, with using technology to respond to FOAA requests. Does technology impede or help the response times and/or burden on the county to respond to FOAA requests? Please explain how the use of technology increases or reduces burden on the county.

4. Describe how the county uses artificial intelligence (AI) to help fulfill FOAA requests, specifically referring the application used (e.g., Microsoft Copilot, ChatGPT, etc.). If AI is used in any capacity in the county, please consider sharing the county's AI policy and any benefits and challenges with the use of AI thus far.

5. Determine whether a list of best practices would be helpful for the county to determine more efficient ways to fulfill FOAA requests, including through the use of technology.

Thank you for your attention to this matter. You may provide your responses by email to Sam.Senft@legislature.maine.gov or via mail to:

Right to Know Advisory Committee
c/o Office of Policy and Legal Analysis
13 State House Station Cross Office Building,
Room 215 Augusta, Maine 04333-0013

If you have any questions or concerns about our request, please do not hesitate to reach out to Advisory Committee staff, Sam Senft, at (207) 287-1670.

APPENDIX R

Draft Letter to Maine Municipal Association

STATE OF MAINE

RIGHT TO KNOW ADVISORY COMMITTEE

XX XX, 2025

Rebecca Lambert
Maine Municipal Association
60 Community Drive
Augusta, Maine 04330
Via email: RLambert@memun.org

Dear Rebecca Lambert:

Over the past several years, the Right to Know Advisory Committee (RTKAC) has considered the challenges of burdensome Freedom of Access Act (FOAA) requests. This year RTKAC formed a subcommittee on technology to explore how technology interacts with the FOAA. The Technology subcommittee became specifically interested in exploring how technology may assist state agencies, counties, municipalities and schools fulfill FOAA requests. Simultaneously, the Burdensome FOAA Requests subcommittee was also interested if technology can reduce the burden on public access officers. As such, the Technology subcommittee invited you to present at the subcommittee's second meeting on October 27, 2025. We appreciated your input at that meeting.

Joined by a delegation of members from the Burdensome Requests subcommittee, subcommittee members received a memo and brief presentation from you regarding how municipalities use technology to fulfill FOAA requests. The subcommittees recognize you were not able to gather information from a representative sample of municipalities given our time limitations; however, the memo with initial information from select municipalities made it clear to subcommittee members that there is significant variability in the technologies used in municipalities.

To better understand which technologies are available to municipalities, as well as which technologies are used to respond to FOAA requests, the Technology subcommittee and the Burdensome Requests subcommittee request that the Maine Municipal Association distribute a survey to its members to collect information on the technology used by municipalities when responding to FOAA requests. The goal of the survey is to use the information collected as a springboard for the 21st RTKAC to further explore how technology may assist municipalities in fulfilling FOAA requests.

The subcommittees request Maine Municipal Association to return, by July 1, 2026, your member organizations' responses to the following questions. **Please note that information provided to the subcommittees in response to this survey will be distributed to all Right to Know Advisory Committee members and is public information.**

Requested Information

1. Detail the technology currently used by the municipality to retain records and/or respond to FOAA requests. Please include the technologies, referencing specific software/platforms/applications (e.g., Microsoft 365, Google Vault, etc.) used for: 1) record retention; 2) searching for records; 3) reviewing records; and 4) distributing records.

    a. Who determines the technology used in the municipality? What factors contribute to the decision-making process?

    b. How much does this technology cost?

2. Describe the ways in which the municipality uses that technology to fulfill FOAA requests. Elaborate on the technology used, when it is used, and who uses the technology (i.e., is this person trained in the FOAA process?). If technology is not used to fulfill FOAA requests, describe the factors that contributed to the decision not to use technology for fulfilling FOAA requests and how FOAA requests are currently fulfilled.

3. Detail any challenges, potential or realized, with using technology to respond to FOAA requests. Does technology impede or help the response times and/or burden on the municipality to respond to FOAA requests? Please explain how the use of technology increases or reduces burden on the municipality.

4. Describe how the municipality uses artificial intelligence (AI) to help fulfill FOAA requests, specifically referring the application used (e.g., Microsoft Copilot, ChatGPT, etc). If AI is used in any capacity in the municipality, please consider sharing the municipality's AI policy and any benefits and challenges with the use of AI thus far.

5. Determine whether a list of best practices would be helpful for the municipality to determine more efficient ways to fulfill FOAA requests, including through the use of technology.

Thank you for your attention to this matter. You may provide your responses by email to Sam.Senft@legislature.maine.gov or via mail to:

Right to Know Advisory Committee
c/o Office of Policy and Legal Analysis
13 State House Station Cross Office Building,
Room 215 Augusta, Maine 04333-0013

If you have any questions or concerns about our request, please do not hesitate to reach out to Advisory Committee staff, Sam Senft, at (207) 287-1670.

APPENDIX S

Draft Letter to Maine School Management Association

STATE OF MAINE

RIGHT TO KNOW ADVISORY COMMITTEE

XX XX, 2025

Eric Waddell
Maine School Management Association
49 Community Drive
Augusta, ME 04330
Via email: EWaddell@MSMAweb.com

Dear Eric Waddell:

Over the past several years, the Right to Know Advisory Committee (RTKAC) has considered the challenges of burdensome Freedom of Access Act (FOAA) requests. This year the RTKAC formed a subcommittee on technology to explore how technology interacts with the FOAA. The Technology subcommittee became specifically interested in exploring how technology may assist state agencies, counties, municipalities and school districts fulfill FOAA requests. Simultaneously, the Burdensome FOAA Requests subcommittee was also interested if technology can reduce the burden on public access officers. As such, the Technology subcommittee invited Justin Cary, an attorney at Drummond Woodsum who represents certain school districts, to present at the subcommittee's second meeting on October 27, 2025.

Joined by a delegation of members from the Burdensome Requests subcommittee, Mr. Cary provided an overview of the ways in which school districts utilize technology. Mr. Cary noted that many school districts in which Drummond Woodsum assists use Google services, like Google Vault which may help retrieve information for FOAA requests. In addition, Mr. Cary explained school districts have been experimenting with generative AI, using programs like MagicSchool AI, to help sift through information requested under FOAA. During this presentation, it became clear to subcommittee members that there is significant variability in the technologies used by school districts. This includes who is using technology at the school district to respond the requests. Specifically, the subcommittees learned district superintendents and technology directors, if the district has one, are primarily responsible for using technology to search for information related to the FOAA request.

To better understand which technologies are available to schools, as well as which technologies are used to respond to FOAA requests, the Technology subcommittee and the Burdensome Requests subcommittee requests that the Maine School Management Association, in collaboration with the Maine Educational Technology Directors Association, distribute a survey

to its members to collect information on the technology used by school districts when responding to FOAA requests. The goal of the survey is to use the information collected as a springboard for the 21st RTKAC to further explore how technology may assist school districts in fulfilling FOAA requests.

The subcommittees request Maine School Management Association to return, by July 1, 2026, your member organizations' responses to the following questions. **Please note that information provided to the subcommittees in response to this survey will be distributed to all Right to Know Advisory Committee members and is public information.**

Requested Information

1. Detail the technology currently used by the school district to retain records and/or respond to FOAA requests. Please include the technologies, referencing specific software/platforms/applications (e.g., Microsoft 365, Google Vault, etc.) used for: 1) record retention; 2) searching for records; 3) reviewing records; and 4) distributing records.
    a. Who determines the technology used in the school district? What factors contribute to the decision-making process?
    b. How much does this technology cost?
2. Describe the ways in which the school district uses that technology to fulfill FOAA requests. Elaborate on the technology used, when it is used, and who uses the technology (i.e., is this person trained in the FOAA process?). If technology is not used to fulfill FOAA requests, describe the factors that contributed to the decision not to use technology for fulfilling FOAA requests and how FOAA requests are currently fulfilled.
3. Detail any challenges, potential or realized, with using technology to respond to FOAA requests. Does technology impede or help the response times and/or burden on the school district to respond to FOAA requests? Please explain how the use of technology increases or reduces burden on the school district.
4. Describe how the school district uses artificial intelligence (AI) to help fulfill FOAA requests, specifically referring the application used (e.g., Microsoft Copilot, ChatGPT, MagicSchool, etc.). If AI is used in any capacity in the school district, please consider sharing the school district's AI policy and any benefits and challenges with the use of AI thus far.
5. Determine whether a list of best practices would be helpful for the school district to determine more efficient ways to fulfill FOAA requests, including through the use of technology.

Thank you for your attention to this matter. You may provide your responses by email to Sam.Senft@legislature.maine.gov or via mail to:

Right to Know Advisory Committee
c/o Office of Policy and Legal Analysis
13 State House Station Cross Office Building,
Room 215 Augusta, Maine 04333-0013

If you have any questions or concerns about our request, please do not hesitate to reach out to Advisory Committee staff, Sam Senft, at (207) 287-1670.

cc: Robbie Feinberg

APPENDIX T

FOAA Mediation Process Proposal

Proposal: Establish a Formal FOAA Mediation Program Within the Office of the Public Access Ombudsman

I. EXECUTIVE SUMMARY

The Legislature should adopt a statutory framework creating a formal, confidential, structured mediation process for Freedom of Access Act (FOAA) disputes, housed within the Office of the Public Access Ombudsman. The program will allow requesters and agencies to resolve disagreements before they escalate to litigation, in a manner that is faster, less costly, and more collaborative while preserving all existing rights to judicial review.

Key features of the proposal include:

- Creation of a FOAA Mediation Program within the Ombudsman's Office;
- A new Deputy Public Access Ombudsman – Mediation Program Director to manage proceedings;
- Clear and predictable timelines for mediation steps;
- Option for either the FOAA requester or the public agency to initiate mediation;
- Tolling of the § 409 appeal deadline beginning upon requestor consent;
- Public access to mediation outcomes, including party names, settlement agreements, and nonbinding recommendations;
- Retention of confidentiality protections for mediation communications and caucus discussions.

This proposal strengthens Maine's commitment to open government while reducing unnecessary litigation and building a collaborative framework for FOAA compliance.

II. DEFINITIONS

1. Public Agency

"Public agency" has the same meaning as in 1 M.R.S. § 402(2). This includes state departments, municipal governments, counties, school administrative units, quasi-governmental entities, and any other governmental body subject to the Maine Freedom of Access Act.

2. FOAA Requester

"FOAA requester" means the person or entity who submitted the original request for public records under 1 M.R.S. § 408-A.

3. Mediation Initiating Party

"Mediation initiating party" means either the public agency or the FOAA requester who files a Request for Mediation with the Public Access Ombudsman.

4. Tolling

"Tolling" means the legal suspension of a statutory deadline, during which the time does not run. Under this program, tolling applies to the 30-day appeal deadline in § 409 beginning when the FOAA requester consents to mediation.

5. In Camera Review

"In camera review" means a confidential inspection of disputed records by the Public Access Ombudsman or Deputy Ombudsman for evaluating exemption claims or burdensomeness arguments. Records retain their original FOAA status.

III. FOAA MEDIATION PROCESS

1. Request for Mediation

1. A FOAA requester or a public agency may initiate mediation by submitting a Request for Mediation to the Public Access Ombudsman.
2. The mediation initiating party shall provide written notice of the filing to the non-initiating party at the time the Request for Mediation is submitted.
3. Tolling of the 30-day appeal period under Title 1, section 409 occurs as follows:
   A. Tolling begins immediately upon filing when the Request for Mediation is submitted by the FOAA requester;
   B. Tolling begins upon written consent of the FOAA requester when mediation is initiated by a public agency.

2. Notification to the Non-Initiating Party

1. The mediation initiating party shall provide written notice to the non-initiating party containing:
   A. A copy of the Request for Mediation;
   B. A brief description of the issues in dispute;
   C. If the public agency is the requestor, a statement of the tolling consequences under Title 1, section 409.
2. Notification must be provided on the same day the Request for Mediation is filed with the Ombudsman.

3. Participation Decision (10 Business Days)

1. The non-initiating party shall, within 10 business days of receiving notice:
   A. Consent to participate in mediation;
   B. Decline to participate; or
   C. Consent subject to clarifying statements of issues.
2. If the non-initiating party declines to participate, the Ombudsman shall issue a Notice of Completion, and tolling under Title 1, section 409 concludes on the date of that notice.

4. Intake & Screening (7 Business Days from Participation Decision)

The Deputy Ombudsman – Mediation Director determines:

1. Jurisdiction
2. Whether additional information is needed
3. Whether a constructive denial occurred
4. Whether the dispute involves:
    A. Fee issues
    B. Delay issues
    C. Exemption disagreements
    D. "Unduly burdensome" arguments
    E. Electronic formatting issues
    F. Scope disputes

All intake materials remain confidential.

5. Document Exchange (15 Business Days Before Mediation)

Both parties confidentially submit:

A. Communications relevant to the FOAA request
B. Any burden estimates, fee calculations, or exemption assertions
C. Confidential records (if applicable) for in-camera review

Materials do not become public records.

6. Scheduling the Mediation Session

The mediation session is scheduled after intake and exchanges are complete. No statutory deadline is imposed; mediation must occur within a reasonable timeframe, considering party availability and case complexity.

7. Filing of Mediation Position Statements (5 Business Days Before Mediation)

Each party submits a refined, confidential, 1–5-page position statement outlining:

A. Issues in dispute
B. Statutory bases for their positions
C. Proposed resolution options

8. Mediation Session

Mediation session facilitated by the Deputy Ombudsman or an appointed mediator. Structure:

Agenda typically includes:

1. Brief joint session outlining issues

2. Private caucuses for candid discussion with each party
3. Neutral evaluation of likely court outcomes
4. Negotiation of one or more solutions:
    - Narrowing scope
    - Staged/rolling productions
    - Fee adjustments
    - Production timelines
    - Agreement about redactions
    - Agreement about formats

9. Post-Mediation Outcomes

1. If the parties reach agreement:
   A. The parties shall execute a Mediation Resolution Agreement;
   B. The Agreement is a public record, unless specific provisions are confidential under another statute;
   C. The Ombudsman shall issue a Notice of Completion, concluding tolling.
2. If the parties do not reach agreement:
   A. Either party may request a nonbinding written recommendation;
   B. A nonbinding recommendation is a public record;
   C. The Ombudsman shall issue a Notice of Completion, concluding tolling.
3. Content of Notice of Completion:
   A. Date mediation ended;
   B. Whether a settlement was achieved;
   C. Whether a recommendation was issued.

10. Record of Mediation Activity; Annual Reporting

1. The Ombudsman shall maintain a record of the following information for each mediation:
   A. Identity of the public agency;
   B. Identity of the FOAA requester, unless the requester requests redaction for safety or privacy and demonstrates the need for such credibly to the Deputy Ombudsman;
   C. Whether settlement was reached;
   D. Whether a recommendation was issued.
2. The Ombudsman shall annually publish aggregate data on FOAA mediation activity

III. STATUTORY AMENDMENTS REQUIRED

Below is a list of statutes requiring amendment, followed by the conceptual language for each.

1. 1 M.R.S. § 408-A – Agency Response to Requests

New provisions to add:

- Right to request mediation
- Mandatory inclusion of mediation notice in every denial or burdensome notice

- Confidentiality of mediation documents
- Safe harbor for agencies participating in mediation
- Clarification that ongoing mediation does not relieve agency of response duties unless the parties agree

§ 408-A(13). Mediation Option

A requester or a public agency may file a Request for Mediation with the Public Access Ombudsman within 30 days of receiving a denial, partial denial, fee determination, or notice under subsection 4-A, or after a failure to allow inspection within a reasonable time.

§ 408-A(14). Notice Requirement

Every denial, partial denial, or burdensome request notice must include:

"You may request nonbinding mediation through the Public Access Ombudsman pursuant to section 200-I. Filing such a request tolls the time for filing an appeal under section 409."

§ 408-A(15). Confidentiality of Mediation

Except for except for a Mediation Resolution Agreement, a Nonbinding written recommendation, and a Notice of Completion, all documents, statements, records, notes, communications, and materials submitted for or created during mediation are confidential.

§ 408-A(16). Impact on Agency Obligations

Agency response obligations continue unless the parties mutually agree in writing to suspend production during mediation, with notice to the Ombudsman.

§ 408-A(17). Safe Harbor

Good-faith participation in mediation may be considered by a court when determining attorney's fees under § 409(4).

2. 1 M.R.S. § 409 – Appeal to Superior Court

Add tolling provision:

- Filing a Request for Mediation tolls the 30-day appeal period.
- Tolling continues until the Ombudsman issues a Notice of Completion.
- Requester receives at least 10 days of remaining appeal time after mediation.

§ 409(1-A). Tolling for Mediation

The time for filing an appeal under § 408-A is tolled when the requester files a Request for Mediation with the Public Access Ombudsman or, if mediation is initiated by a public agency,

when the requester consents to participate. Tolling begins on the date the Ombudsman receives the request and continues until the Ombudsman issues a Notice of Completion. The FOAA requester retains the greater of:

(A) the number of days remaining at the time tolling began, or

(B) 10 days from the date of the Notice of Completion.

3. 1 M.R.S. § 411 – Right to Know Advisory Committee

Add oversight authority:

- Committee must receive annual mediation program statistics and make recommendations for improvements.

1 M.R.S. § 411, sub-§6 is amended to read:

§411. Right to Know Advisory Committee

G-1. Oversight of FOAA Mediation Program.

The committee shall receive and review the annual report of the Public Access Ombudsman regarding the FOAA Mediation Program established pursuant to Title 5, section 200-I, subsection 2, paragraph G. The committee may make recommendations to the Legislature concerning statutory changes to improve the effectiveness, accessibility and efficiency of the mediation program or to enhance compliance with this chapter.

4. 5 M.R.S. § 200-I – Public Access Ombudsman

Add:

- Creation of the FOAA Mediation Program
- Authority for confidential in-camera record review for mediation
- Creation of a Deputy Public Access Ombudsman – Mediation Program Director
- Authority to adopt rules (routine technical rules)
- Confidentiality provisions protecting mediation materials
- Nonbinding recommendation authority (with party consent)

5 M.R.S. § 200-I, sub-§2 is amended to read:

G. FOAA Mediation Program.

The Public Access Ombudsman shall administer a mediation program for the resolution of disputes arising under the Maine Freedom of Access Act. The purpose of the mediation program is to provide a voluntary, confidential, timely and cost-effective alternative to litigation for requesters and agencies. The Ombudsman shall, upon receipt of a Request for Mediation filed pursuant to

Title 1, section 408-A, subsection 13, conduct intake review, facilitate the exchange of information, schedule and conduct mediation sessions and issue notices of completion as required by this section and by Title 1, chapter 13, subchapter 1.

Participation in mediation is voluntary for the agency and requester. Mediation conducted under this subsection does not limit or affect any right of appeal under Title 1, section 409.

5 M.R.S. § 200-I, sub-§2 is enacted to read:

H. Rulemaking.

The Ombudsman shall adopt routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A governing:

A. Procedures for filing Requests for Mediation;
B. Forms and timelines used in the mediation program;
C. Confidential handling and secure destruction of mediation materials; and
D. Procedures for issuing and delivering notices of completion and nonbinding recommendations.

5 M.R.S. § 200-I, sub-§2 is enacted to read:

I. Nonbinding recommendations.

Upon request of either party, the Ombudsman or the Deputy Ombudsman may issue a nonbinding written recommendation following the completion of mediation in which a resolution was not reached. The recommendation may include:

A. A summary of the issues in dispute;
B. Identification of the relevant statutory provisions under the Freedom of Access Act;
C. A neutral evaluation of the parties' respective positions; and
D. A nonbinding recommendation for resolving the dispute.

5 M.R.S. § 200-I, sub-§3-A is enacted to read:

3-A. Deputy Public Access Ombudsman; Mediation Program Director.

The position of Deputy Public Access Ombudsman – Mediation Program Director is established within the Office of the Attorney General to assist the Public Access Ombudsman in the administration of the FOAA Mediation Program. The Deputy Ombudsman shall:

A. Conduct mediations and facilitate the resolution of disputes under the Freedom of Access Act;
B. Review confidential records submitted for in camera inspection during mediation;
C. Prepare notices, recommendations and communications for the parties; and
D. Perform other duties assigned by the Public Access Ombudsman to ensure the efficient operation of the mediation program.

5 M.R.S. § 200-I, sub-§4-A is enacted to read:

4-A. Confidentiality; mediator privilege.

A. **Confidentiality of mediation documents.** Except for a Mediation Resolution Agreement, a Nonbinding written recommendation, and a Notice of Completion, all mediation communications, documents, notes, statements, draft agreements, records submitted for in camera review and all other materials prepared for or used in or created during the course of mediation pursuant to this section or Title 1, section 408-A, subsection 13 are confidential.

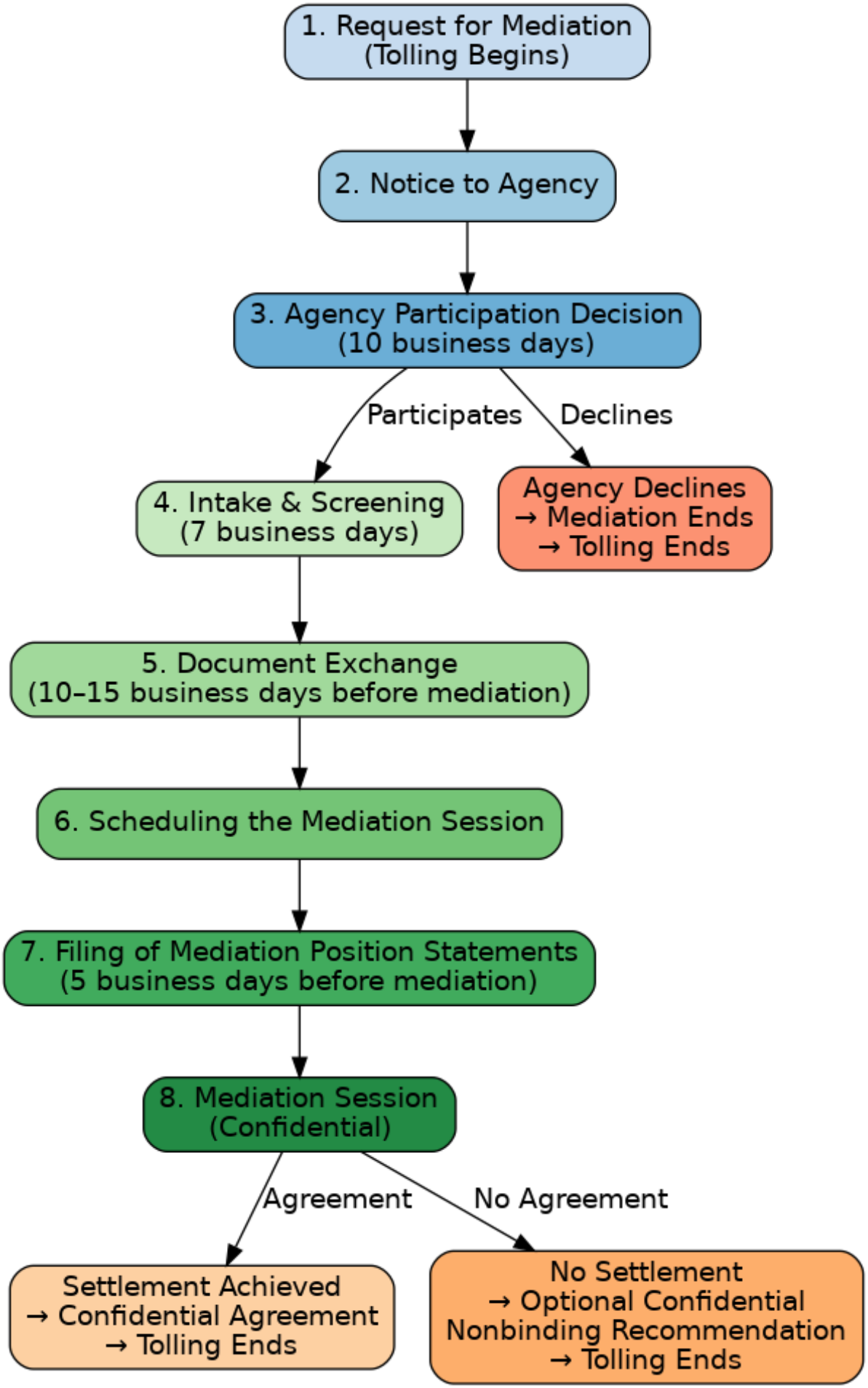
B. **Admissibility.** Nonbinding recommendations prepared with the consent of both parties may be submitted to and considered by the Court. This recommendation has no legal force and does not bind the Superior Court. Parties retain all rights under 1 M.R.S. § 409. All other mediation communications and documents described in paragraph A are inadmissible in any judicial, administrative or other proceeding, except to enforce the terms of a written Mediation Resolution Agreement executed by both parties.

C. **Mediator privilege.** The Public Access Ombudsman, the Deputy Public Access Ombudsman and any employee or contractor acting as a mediator may not be required to testify in any judicial, administrative or other proceeding concerning any matter arising from mediation, and may not be compelled to disclose any mediation communication or document. This privilege may not be waived except by the express written consent of all parties to the mediation.

D. **Retention and destruction.** The Ombudsman shall adopt rules establishing procedures for the retention and destruction of mediation materials. Such rules must ensure the protection of confidential information and the secure destruction of mediator notes at the conclusion of mediation.

APPENDIX U

FOAA Mediation Process Proposal Flowchart



*This flow chart was formatted with the use of artificial intelligence