# Subcommittee of the
# RIGHT TO KNOW ADVISORY COMMITTEE
## Public Employee Disciplinary Records Subcommittee

## Friday, October 23, 9:30am

Location: Cross State Office Building, Room 214 (Hybrid Meeting)
Public access also available through the Maine Legislature's livestream:
https://legislature.maine.gov/Audio/#214

1. Introductions

2. Request for feedback from RTKAC member representing school interests

3. Subcommittee discussion

4. Discussion of recommendation to review public employee disciplinary record statutes for consistency

5. Discussion of recommendation to review previous materials capturing historical discussions on a tiered systems of retention for public employee disciplinary records

6. Further ideas and discussion on how to define disciplinary action or a tiered system

7. Next steps

8. Confirm future meeting dates

    a. Thursday, November 12, 2026 at 9:00am

9. Adjourn

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*School employee records statutes*

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# Part A Materials

| STATE, COUNTY, AND MUNICIPAL EMPLOYEES | |
|---|---|
| **5 MRSA §7070(2)(E)**<br><br>State Employees | **§7070. Personnel records**<br>**E.** Except as provided in paragraph F and section 7070-A, complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. *The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action*. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.<br><br>For purposes of this paragraph, "final written decision" means:<br>**(1)** The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or<br>**(2)** If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.<br><br>A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and |
| **30-A MRSA §503(1)(B)(5)**<br><br>County Employees | **§503. Personnel records**<br>**(5)** Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. *The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action.* If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.<br><br>For purposes of this subparagraph, "final written decision" means:<br>**(a)** The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or<br>**(b)** If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.<br><br>A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and |
| **30-A MRSA §2702(1)(B)(5)**<br><br>Municipal Employees | **§2702. Personnel records**<br>**(5)** Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.<br><br>For purposes of this subparagraph, "final written decision" means:<br>**(a)** The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or<br>**(b)** If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.<br><br>A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and |

| STATE, COUNTY, AND MUNICIPAL LAW ENFORCEMENT – USE OF PHYSICAL OR DEADLY FORCE | |
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| **5 MRSA §7070-A**<br><br>State Employees – Law Enforcement Officers | **§7070-A. Personnel records; deadly force or physical force by law enforcement officer**<br>The name of a law enforcement officer is not confidential under section 7070, subsection 2, paragraph E in cases involving:<br><br>**1. Deadly force.** The use of deadly force by a law enforcement officer; or<br>**2. Physical force.** The use of physical force by a law enforcement officer resulting in death or serious bodily injury.<br><br>In cases specified in subsections 1 and 2, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case. |
| **30-A MRSA §503(1-A)**<br><br>County Employees – Law Enforcement Officers | **1-A. Investigations of deadly force or physical force by law enforcement officer.** The name of a law enforcement officer is not confidential under subsection 1, paragraph B, subparagraph (5) in cases involving:<br><br>**A.** The use of deadly force by a law enforcement officer; or<br>**B.** The use of physical force by a law enforcement officer resulting in death or serious bodily injury.<br><br>In cases specified in paragraphs A and B, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case. |
| **30-A MRSA §2702(1-A)**<br><br>Municipal Employees – Law Enforcement Officers | **1-A. Investigations of deadly force or physical force by law enforcement officer.** The name of a law enforcement officer is not confidential under subsection 1, paragraph B, subparagraph (5) in cases involving:<br><br>**A.** The use of deadly force by a law enforcement officer; or<br>**B.** The use of physical force by a law enforcement officer resulting in death or serious bodily injury.<br><br>In cases specified in paragraphs A and B, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case. |

| STATE AND COUNTY EMPLOYEES – SEXUAL MISCONDUCT WITHIN STATE CORRECTIONAL FACILITY OR COUNTY JAIL | |
|---|---|
| **5 MRSA §7070(2)(F)**<br><br>State Employees – Correctional Facility Employees | **§7070. Personnel records**<br>**F.** In the case of an allegation of sexual misconduct or sexual harassment within a correctional facility, a determination that the allegation was substantiated, unsubstantiated or unfounded, except that the determination may be disclosed to the alleged victim. Unless the allegation is determined to be unfounded, the following information may also be shared with the alleged victim:<br><br>**(1)** Whether the individual alleged to have engaged in the sexual misconduct or sexual harassment is still assigned to the same work location where the sexual misconduct or sexual harassment allegedly occurred;<br>**(2)** Whether the individual under subparagraph (1) is still employed at the correctional facility;<br>**(3)** Whether the individual under subparagraph (1) has been criminally charged or convicted of a crime arising out of the allegation of sexual misconduct or sexual harassment; and<br>**(4)** Whether the prosecuting agency declined to seek an indictment or the grand jury declined to indict the individual under subparagraph (1) based on the allegation of sexual misconduct or sexual harassment. |
| **30-A MRSA §503(1-B)**<br><br>County Employees – County Jail Employees | **1-B. Investigation of allegation of sexual misconduct or sexual harassment by county jail employee**. Notwithstanding subsection 1, paragraph B, subparagraph (5), in the case of an allegation of sexual misconduct or sexual harassment within a county jail or detention facility, a determination that the allegation was substantiated, unsubstantiated or unfounded may be disclosed to the alleged victim. Unless the allegation is determined to be unfounded, the following information may also be shared with the alleged victim:<br><br>**A**. Whether the individual alleged to have engaged in the sexual misconduct or sexual harassment is still assigned to the same work location where the sexual misconduct or sexual harassment allegedly occurred;<br>**B.** Whether the individual under paragraph A is still employed at the county jail or detention facility;<br>**C.** Whether the individual under paragraph A has been criminally charged or convicted of a crime arising out of the allegation of sexual misconduct or sexual harassment; and<br>**D.** Whether the prosecuting agency declined to seek an indictment or the grand jury declined to indict the individual under paragraph A based on the allegation of sexual misconduct or sexual harassment. |

| PUBLIC EMPLOYEE DISCIPLINARY RECORDS – SCHOOLS | |
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| **20-A MRSA §6101(2)(B)(6)**<br><br>**&**<br><br>**20-A MRSA §6101(2)(C)**<br><br>School Employee Records | **2. Access.** The following provisions apply to access of employee records.<br><br>B. Except as provided in paragraph A, information in any form relating to an employee or applicant for employment, or to the employee's immediate family, must be kept confidential if it relates to the following:<br>(6) Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action;<br><br>C. Any written record of a decision involving disciplinary action taken with respect to an employee by the governing body of the school administrative unit shall not be included within any category of confidential information set forth in paragraph B. |
| **20-A MRSA §6101(3)**<br><br>School Employee Records | **3. Commissioner's review.** The commissioner shall have access to any of the records or documents designated as confidential in this section for carrying out the commissioner's duties pursuant to section 13020. Copies of any such records or documents shall simultaneously be provided to the employee.<br><br>The commissioner shall also have access to support system documents for carrying out the commissioner's certification and support system approval duties pursuant to chapter 502 and to other confidential employee records for carrying out the commissioner's school approval duties pursuant to chapter 206.<br><br>Records of complaints, charges of misconduct, investigations and disciplinary actions may be provided by the commissioner or the commissioner's designee to the Department of Health and Human Services when an investigation of child abuse or neglect in accordance with Title 22, section 4099-N, subsection 3 is in process. |
| **20-A MRSA §13004(2-A)(D)**<br><br>List of Persons Credentialed – School Employees | **2-A. Confidentiality.** The provisions of this subsection govern confidentiality.<br>**D.** Notwithstanding paragraph A, the following information concerning final written decisions relating to disciplinary action taken by the commissioner against a person holding a credential is a public record:<br>(1) The name of the person;<br>(2) The type of action taken, consisting of denial, revocation, suspension, surrender or reinstatement;<br>(3) The grounds for the action taken;<br>(4) The relevant dates of the action;<br>(5) The type of credential and endorsements held, including relevant dates;<br>(6) The schools where the person was or is employed; and<br>(7) The dates of employment. |

| PUBLIC EMPLOYEE DISCIPLINARY RECORDS – OTHER | |
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| 5 MRSA §17057(5)(B)(6)<br><br>Maine Public Employees Retirement System Employees | **5. Personnel records of Maine Public Employees Retirement System staff.**<br>**(6)** Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written decision, with regard to that employee, is public.<br><br>For purposes of this subparagraph, "final written decision" means:<br>**(a)** The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or<br>**(b)** If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.<br>A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days. |
| 30-A MRSA §4706(5)(B)(5)<br><br>Housing Authorities Employees | **5. Confidentiality of personnel records.**<br>**(5)** Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action; and |
| 35-A MRSA §114(1)(B)(5)<br><br>Public Utilities Commission Employees | **1. Confidential.**<br>**(5)** Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations or any other information or materials that may result in disciplinary action; or |

**§7070. Personnel records**

Every appointment, transfer, promotion, demotion, dismissal, vacancy, change of salary rate, leave of absence, absence from duty and other temporary or permanent change in status of employees in both the classified service and the unclassified service of the Executive and Legislative Departments must be reported to the officer at such time, in such form and together with such supportive or pertinent information as the officer by rule prescribes. [RR 2023, c. 1, Pt. B, §42 (COR); RR 2023, c. 1, Pt. B, §50 (AFF).]

The officer shall maintain a perpetual roster of all officers and employees in the classified and unclassified services, showing for each person such data that the officer considers pertinent. [RR 2023, c. 1, Pt. B, §43 (COR); RR 2023, c. 1, Pt. B, §50 (AFF).]

Records of the Bureau of Human Resources are public records and open to inspection of the public during regular office hours at reasonable times and in accordance with the procedure as the officer may provide. [RR 2023, c. 1, Pt. B, §44 (COR); RR 2023, c. 1, Pt. B, §50 (AFF).]

The following records shall be confidential and not open to public inspection, and shall not be "public records," as defined in Title 1, section 402, subsection 3: [PL 1985, c. 785, Pt. B, §38 (NEW).]

**1. Papers relating to applications, examinations or evaluations of applicants.** Except as provided in this subsection, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the State for use in the examination or evaluation of applicants for positions as state employees.

A. Notwithstanding any confidentiality provision other than this subsection, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O. [PL 2007, c. 597, §5 (AMD).]

B. Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference. [PL 1989, c. 402, §1 (NEW).]

C. This subsection does not preclude union representatives from access to personnel records, consistent with subsection 4, which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection; [PL 1989, c. 402, §1 (NEW).]

[PL 2007, c. 597, §5 (AMD).]

**2. Personal information.** Records containing the following, except they may be examined by the employee to whom they relate when the examination is permitted or required by law:

A. Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders; [PL 1985, c. 785, Pt. B, §38 (NEW).]

B. Performance evaluations and personal references submitted in confidence; [PL 1985, c. 785, Pt. B, §38 (NEW).]

C. Information pertaining to the credit worthiness of a named employee; [PL 1985, c. 785, Pt. B, §38 (NEW).]

D. Information pertaining to the personal history, general character or conduct of members of the employee's immediate family; [PL 1997, c. 124, §2 (AMD).]

D-1. Personal information, including that which pertains to the employee's:

(1) Age;

(2) Ancestry, ethnicity, genetic information, national origin, race or skin color;

(3) Marital status;

(4) Mental or physical disabilities;

(5) Personal contact information, as described in Title 1, section 402, subsection 3, paragraph O;

(6) Personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance;

(7) Religion;

(8) Sex, gender identity or sexual orientation as defined in section 4553, subsection 9-C; or

(9) Social security number.

Such personal information may be disclosed publicly in aggregate form, unless there is a reasonable possibility that the information would be able to be used, directly or indirectly, to identify any specific employee.

When there is a work requirement for public access to personal information under this paragraph that is not otherwise protected by law, that information may be made public. The State Human Resources Officer, upon the request of the employing agency, shall make the determination that the release of certain personal information not otherwise protected by law is allowed; [PL 2023, c. 615, §1 (AMD).]

*

E. Except as provided in paragraph F and section 7070-A, complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

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

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

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

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and [PL 2023, c. 615, §2 (AMD).]

F. In the case of an allegation of sexual misconduct or sexual harassment within a correctional facility, a determination that the allegation was substantiated, unsubstantiated or unfounded, except that the determination may be disclosed to the alleged victim. Unless the allegation is determined to be unfounded, the following information may also be shared with the alleged victim:

(1) Whether the individual alleged to have engaged in the sexual misconduct or sexual harassment is still assigned to the same work location where the sexual misconduct or sexual harassment allegedly occurred;

(2) Whether the individual under subparagraph (1) is still employed at the correctional facility;

(3) Whether the individual under subparagraph (1) has been criminally charged or convicted of a crime arising out of the allegation of sexual misconduct or sexual harassment; and

(4) Whether the prosecuting agency declined to seek an indictment or the grand jury declined to indict the individual under subparagraph (1) based on the allegation of sexual misconduct or sexual harassment. [PL 2023, c. 646, Pt. B, §1 (AMD).]

This subsection does not preclude union representatives from having access to personnel records, consistent with subsection 4, that may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this subsection remain confidential and are not open for public inspection;
[PL 2023, c. 646, Pt. B, §1 (AMD).]

**3. Other information.** Other information to which access by the general public is prohibited by law.
[PL 1985, c. 785, Pt. B, §38 (NEW).]

**4. Disclosure of certain information for grievance and other proceedings.** The State Human Resources Officer may release specific information designated confidential by this section to be used in negotiations, mediation, fact-finding, arbitration, grievance proceedings and other proceedings in which the State is a party. For the purpose of this subsection, "other proceedings" means unemployment compensation proceedings, workers' compensation proceedings, human rights proceedings and labor relations proceedings.

Confidential information provided under this subsection shall be governed by the following.

A. The information to be released shall be information only as necessary and directly related to the proceeding as determined by the State Human Resources Officer. [PL 1987, c. 673, §1 (NEW); PL 2023, c. 412, Pt. D, §3 (REV).]

B. [PL 2007, c. 240, Pt. HH, §12 (RP).]

C. The proceeding for which the confidential information is provided shall be private and not open to the public; or, if the proceeding is open to the public, the confidential information shall not be disclosed except exclusively in the presence of the fact finder, the parties and counsel of record, and the employee who is the subject of the proceeding and provisions are made to ensure that there is no public access to the confidential information. [PL 1987, c. 673, §1 (NEW).]

The State may use this confidential information in proceedings and provide copies to the employee organization that is a party to the proceedings, provided the information is directly related to those proceedings as defined by the applicable collective bargaining agreement. Confidential personnel records in the possession of the Bureau of Human Resources may not be open to public inspection and may not be "public records," as defined in Title 1, section 402, subsection 3.
[PL 2007, c. 240, Pt. HH, §12 (AMD); PL 2023, c. 412, Pt. D, §3 (REV).]

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

subsection or participating in a related proceeding is immune from criminal and civil liability for the act of disclosure or for participating in the proceeding.
[PL 2013, c. 201, §1 (NEW).]

SECTION HISTORY

PL 1985, c. 785, §B38 (NEW). PL 1987, c. 673, §1 (AMD). PL 1989, c. 402, §1 (AMD). PL 1991, c. 229, §1 (AMD). PL 1991, c. 729, §1 (AMD). PL 1997, c. 124, §2 (AMD). PL 1997, c. 770, §1 (AMD). PL 2007, c. 240, Pt. HH, §12 (AMD). PL 2007, c. 466, Pt. A, §21 (AMD). PL 2007, c. 597, §§5, 6 (AMD). PL 2013, c. 201, §1 (AMD). PL 2019, c. 451, §1 (AMD). PL 2023, c. 159, §1 (AMD). PL 2023, c. 412, Pt. D, §3 (REV). RR 2023, c. 1, Pt. B, §§42-44 (COR). RR 2023, c. 1, Pt. B, §50 (AFF). PL 2023, c. 615, §§1-3 (AMD). PL 2023, c. 646, Pt. B, §1 (AMD).

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state; law enforcement



## §7070-A. Personnel records; deadly force or physical force by law enforcement officer

The name of a law enforcement officer is not confidential under section 7070, subsection 2, paragraph E in cases involving: [PL 1991, c. 729, §2 (NEW).]

**1. Deadly force.** The use of deadly force by a law enforcement officer; or
[PL 1991, c. 729, §2 (NEW).]

**2. Physical force.** The use of physical force by a law enforcement officer resulting in death or serious bodily injury.
[PL 1991, c. 729, §2 (NEW).]

In cases specified in subsections 1 and 2, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case. [PL 1991, c. 729, §2 (NEW).]

SECTION HISTORY

PL 1991, c. 729, §2 (NEW).

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County employees



**§503. Personnel records**

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

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

(1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.

(2) Telephone numbers are confidential if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(3) This paragraph does not preclude union representatives from access to personnel records which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection; [PL 2025, c. 111, §§4, 5 (AMD).]

B. County records containing the following:

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

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

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

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

*

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

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

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

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

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

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

(6) Personal information, including that which pertains to the employee's:

(a) Age;

(b) Ancestry, ethnicity, genetic information, national origin, race or skin color;

(c) Marital status;

(d) Mental or physical disabilities;

(e) Personal contact information, as described in Title 1, section 402, subsection 3, paragraph O;

(f) Personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance;

(g) Religion;

(h) Sex, gender identity or sexual orientation as defined in Title 5, section 4553, subsection 9-C; or

(i) Social security number.

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

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

[PL 2025, c. 111, §§4, 5 (AMD).]

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

A. The use of deadly force by a law enforcement officer; or [PL 1991, c. 729, §6 (NEW).]

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

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

[PL 1991, c. 729, §6 (NEW).]

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

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

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

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

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

[PL 2023, c. 646, Pt. B, §2 (AMD).]

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

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

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

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

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

[PL 2013, c. 201, §2 (NEW).]

SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD). PL 1989, c. 402, §2 (AMD). PL 1991, c. 229, §2 (AMD). PL 1991, c. 729, §6 (AMD). PL 1997, c. 770, §2 (AMD). PL 2013, c. 201, §2 (AMD). PL 2019, c. 451, §2 (AMD). PL 2023, c. 159, §2 (AMD). PL 2023, c. 615, §4 (AMD). PL 2023, c. 646, Pt. B, §2 (AMD). PL 2025, c. 111, §§4, 5 (AMD).

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## §2702. Personnel records

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

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

(1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.

(2) Telephone numbers are confidential if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(3) This paragraph does not preclude union representatives from access to personnel records that may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this subsection must remain confidential and are not open to public inspection; [PL 2025, c. 111, §§6, 7 (AMD).]

B. Municipal records pertaining to an identifiable employee and containing the following:

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

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

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

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

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

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

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

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

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

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

(6) Personal information, including that which pertains to the employee's:

(a) Age;

(b) Ancestry, ethnicity, genetic information, national origin, race or skin color;

(c) Marital status;

(d) Mental or physical disabilities;

(e) Personal contact information, as described in Title 1, section 402, subsection 3, paragraph O;

(f) Personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance;

(g) Religion;

(h) Sex, gender identity or sexual orientation as defined in Title 5, section 4553, subsection 9-C; or

(i) Social security number.

Such personal information may be disclosed publicly in aggregate form, unless there is a reasonable possibility that the information would be able to be used, directly or indirectly, to identify any specific employee; and [PL 2019, c. 451, §3 (AMD).]

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

[PL 2025, c. 111, §§6, 7 (AMD).]

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

A. The use of deadly force by a law enforcement officer; or [PL 1991, c. 729, §7 (NEW).]

B. The use of physical force by a law enforcement officer resulting in death or serious bodily injury. [PL 1991, c. 729, §7 (NEW).]

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

[PL 1991, c. 729, §7 (NEW).]

**2. Employee right to review.** On written request from an employee or former employee, the municipal official with custody of the records shall provide the employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the municipal official has a personnel file for that employee. These reviews shall take place during normal office hours at the location where the personnel files are maintained. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits which the municipal official may possess. The records described in subsection 1, paragraph B, may also be examined by the employee to whom they relate, as provided in this subsection.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

**3. Constitutional obligations of a prosecutor.** Notwithstanding this section or any other provision of law, this section does not preclude the disclosure of confidential personnel records and the information contained in those records to the Attorney General, a deputy attorney general, an assistant attorney general, a district attorney, a deputy district attorney, an assistant district attorney or the equivalent departments or offices in a federal jurisdiction that are related to the determination of and compliance with the constitutional obligations of the State or the United States to provide discovery to a defendant in a criminal matter. A person or entity participating in good faith disclosure under this subsection or participating in a related proceeding is immune from criminal and civil liability for the act of disclosure or for participating in the proceeding.
[PL 2013, c. 201, §3 (NEW).]

SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD). PL 1989, c. 402, §3 (AMD). PL 1991, c. 229, §3 (AMD). PL 1991, c. 729, §7 (AMD). PL 1997, c. 770, §3 (AMD). PL 2013, c. 201, §3 (AMD). PL 2019, c. 451, §3 (AMD). PL 2025, c. 111, §§6, 7 (AMD).

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**§6101. Record of directory information**

The following provisions apply to employee records. [PL 1981, c. 693, §§5, 8 (NEW).]

**1. Contents.** A school administrative unit shall maintain a record of directory information on each employee as follows:

A. Name; [PL 1981, c. 693, §§5, 8 (NEW).]

B. Dates of employment; [PL 1981, c. 693, §§5, 8 (NEW).]

C. Regular and extracurricular duties, including all courses taught in that school administrative unit; [PL 1981, c. 693, §§5, 8 (NEW).]

D. Post-secondary educational institutions attended; [PL 1981, c. 693, §§5, 8 (NEW).]

E. Major and minor fields of study recognized by the post-secondary institutions attended; and [PL 1997, c. 452, §1 (AMD).]

F. Degrees received and dates awarded. [PL 1997, c. 452, §1 (AMD).]

G. [PL 1997, c. 452, §2 (RP).]
[PL 1997, c. 452, §§1, 2 (AMD).]

**2. Access.** The following provisions apply to access of employee records.

A. The record of directory information shall be available for inspection and copying by any person. [PL 1981, c. 693, §§5, 8 (NEW).]

B. Except as provided in paragraph A, information in any form relating to an employee or applicant for employment, or to the employee's immediate family, must be kept confidential if it relates to the following:

(1) All information, working papers and examinations used in the examination or evaluation of all applicants for employment;

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

(3) Performance evaluations, personal references and other reports and evaluations reflecting on the quality or adequacy of the employee's work or general character compiled and maintained for employment purposes;

(4) Credit information;

(5) Except as provided by subsection 1, the personal history, general character or conduct of the employee or any member of the employee's immediate family;

* (6) Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action;

(7) Social security number;

(8) The teacher action plan and support system documents and reports maintained for certification purposes; and

(9) Criminal history record information obtained pursuant to section 6103. [PL 1995, c. 547, §4 (AMD).]

* C. Any written record of a decision involving disciplinary action taken with respect to an employee by the governing body of the school administrative unit shall not be included within any category of confidential information set forth in paragraph B. [PL 1981, c. 693, §§5, 8 (NEW).]
[PL 1995, c. 547, §4 (AMD).]

**3. Commissioner's review.** The commissioner shall have access to any of the records or documents designated as confidential in this section for carrying out the commissioner's duties pursuant to section 13020. Copies of any such records or documents shall simultaneously be provided to the employee.

The commissioner shall also have access to support system documents for carrying out the commissioner's certification and support system approval duties pursuant to chapter 502 and to other confidential employee records for carrying out the commissioner's school approval duties pursuant to chapter 206.

Records of complaints, charges of misconduct, investigations and disciplinary actions may be provided by the commissioner or the commissioner's designee to the Department of Health and Human Services when an investigation of child abuse or neglect in accordance with Title 22, section 4099-N, subsection 3 is in process.
[PL 2025, c. 362, §1 (AMD).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 1983, c. 470, §5 (AMD). PL 1983, c. 806, §60 (AMD). PL 1983, c. 862, §58 (AMD). PL 1985, c. 506, §A37 (AMD). PL 1987, c. 620, §§1,2 (AMD). PL 1995, c. 547, §§2-4 (AMD). PL 1997, c. 452, §§1,2 (AMD). PL 2025, c. 362, §1 (AMD).

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**§13004. List of persons credentialed; records confidential**

**1. Lists.** The commissioner shall keep a list of credentialed individuals. This list is a public record. [PL 2017, c. 235, §3 (AMD); PL 2017, c. 235, §41 (AFF).]

**2. Records confidential.** Transcripts, recommendations and other documents submitted in support of an application for a credential or collected by the department for verification of credential records are confidential. They may be made available only to the following:

A. School boards and superintendents; [PL 1981, c. 693, §§5, 8 (NEW).]

B. Authorized personnel of the department in fulfilling assigned duties; and [PL 1981, c. 693, §§5, 8 (NEW).]

C. Individuals and their representatives who request to examine their own records. [PL 1981, c. 693, §§5, 8 (NEW).]

[PL 2017, c. 235, §3 (AMD); PL 2017, c. 235, §41 (AFF).]

**2-A. Confidentiality.** The provisions of this subsection govern confidentiality.

A. Complaints and responses pursuant to section 13020 and any other information or materials that may result in an action to deny, revoke or suspend a credential are confidential, except when submitted in court proceedings to revoke or suspend a credential. [PL 2017, c. 235, §3 (AMD); PL 2017, c. 235, §41 (AFF).]

B. Except for information designated confidential under section 6101 or section 6103, information designated confidential under paragraph A may be released or used by the department as necessary to:

(1) Complete its own investigations;

(2) Provide information to a national association of state directors of teacher education and certification to which the State belongs;

(3) Assist other public authorities to investigate an individual's credential in another jurisdiction;

(4) Report or prevent criminal misconduct or assist law enforcement agencies in their investigations; or

(5) Report child abuse or neglect under Title 22, section 4011-A. [PL 2017, c. 235, §3 (AMD); PL 2017, c. 235, §41 (AFF).]

C. The department may publish and release as public information statistical summaries of complaints and dispositions as long as the release of such information does not jeopardize the confidentiality of individually identifiable information. [PL 2009, c. 331, §1 (NEW).]

D. Notwithstanding paragraph A, the following information concerning final written decisions relating to disciplinary action taken by the commissioner against a person holding a credential is a public record:

(1) The name of the person;

(2) The type of action taken, consisting of denial, revocation, suspension, surrender or reinstatement;

(3) The grounds for the action taken;

(4) The relevant dates of the action;

(5) The type of credential and endorsements held, including relevant dates;

(6) The schools where the person was or is employed; and

(7) The dates of employment. [PL 2017, c. 235, §3 (AMD); PL 2017, c. 235, §41 (AFF).]
[PL 2017, c. 235, §3 (AMD); PL 2017, c. 235, §41 (AFF).]

**2-B. Addresses of credential holders and applicants.** Home addresses held by the department of individuals with credentials or applicants for credentials in the State may be made available in response to the following:

A. Formal request from a commissioner or chief executive officer of other state agencies, including the judicial branch when access to that information may be necessary in carrying out an official function; and [PL 1987, c. 395, Pt. A, §86 (NEW).]

B. Formal request by majority vote of any joint standing committee of the Legislature when access to that information may be necessary in carrying out an official function. [PL 1987, c. 395, Pt. A, §86 (NEW).]

The use of these addresses by any other agency or department of government to which they may be furnished is limited to the purposes for which they are furnished and by the law under which they may be furnished. It is unlawful for any person to solicit, disclose, receive, make use of or authorize, knowingly permit, participate in or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving assistance, directly or indirectly, derived from the records, papers, files or communications of the State or subdivisions or agencies, or acquired in the course of the performance of official duties. Any person violating this subsection must be punished by a fine of not more than $500 or by imprisonment for not more than 11 months, or by both.
[PL 2017, c. 235, §3 (AMD); PL 2017, c. 235, §41 (AFF).]

**3. Duplication costs.** Individuals requesting copies of their records bear the costs of copying them.
[PL 2017, c. 235, §3 (AMD); PL 2017, c. 235, §41 (AFF).]

**4. Rules.**
[PL 2017, c. 235, §3 (RP); PL 2017, c. 235, §41 (AFF).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 1983, c. 470, §11 (AMD). PL 1983, c. 806, §92 (AMD). PL 1987, c. 395, §A86 (AMD). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2007, c. 666, §1 (AMD). PL 2009, c. 331, §1 (AMD). PL 2009, c. 567, §10 (AMD). PL 2017, c. 235, §3 (AMD). PL 2017, c. 235, §41 (AFF).

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**§13001-A. Definitions**

As used in this chapter and chapters 502 and 502-A, unless the context otherwise indicates, the following terms have the following meanings. [PL 2017, c. 235, §2 (NEW); PL 2017, c. 235, §41 (AFF).]

**1. Administrator.** "Administrator" means an individual who provides leadership services to assist in the operation of schools, including, but not limited to, in the following capacities: superintendent, assistant superintendent, building administrator and principal.
[PL 2017, c. 235, §2 (NEW); PL 2017, c. 235, §41 (AFF).]

**2. Certificate.** "Certificate" means the credential issued by the department to a qualified individual to serve as a teacher, educational specialist, educational technician or administrator.
[PL 2017, c. 235, §2 (NEW); PL 2017, c. 235, §41 (AFF).]

**3. Clearance.** "Clearance" means the credential issued by the department to a qualified individual who has cleared a criminal history record check under section 6103 to serve as an employee in a position for which certification is not required or as an employee of a contracted service provider.
[PL 2017, c. 235, §2 (NEW); PL 2017, c. 235, §41 (AFF).]

**4. Conditional certificate.** "Conditional certificate" means the credential issued to a teacher, educational specialist or administrator who has not met all of the requirements for a certificate or endorsement.
[PL 2017, c. 235, §2 (NEW); PL 2017, c. 235, §41 (AFF).]

**5. Credential.** "Credential" means a document issued by the department indicating that a person has met the criteria to be certified, conditionally certified or cleared under this chapter or chapter 502.
[PL 2017, c. 235, §2 (NEW); PL 2017, c. 235, §41 (AFF).]

**6. Criminal history record check.** "Criminal history record check" means the fingerprint-based criminal history record check conducted by an entity designated by the department under section 6103.
[PL 2017, c. 235, §2 (NEW); PL 2017, c. 235, §41 (AFF).]

**7. Educational specialist.** "Educational specialist" means an individual who provides professional services to a school, including, but not limited to, an athletic director, school counselor, library-media specialist, literacy specialist, school psychologist, school nurse or career and technical education evaluator.
[PL 2021, c. 228, §1 (AMD).]

**8. Educational technician.** "Educational technician" means an individual who provides supportive educational services in accordance with section 13019-H.
[PL 2017, c. 235, §2 (NEW); PL 2017, c. 235, §41 (AFF).]

**9. Educator preparation program.** "Educator preparation program" means a public or private baccalaureate-level or postbaccalaureate-level program approved by the state board to recommend graduates for certification pursuant to chapter 502 as prekindergarten to grade 12 teachers, educational specialists or school administrators.
[PL 2017, c. 235, §2 (NEW); PL 2017, c. 235, §41 (AFF).]

**10. Endorsement.** "Endorsement" means a notation on a certificate that specifies the grades and subject area or work area for which the certificate is valid. A certificate may bear one or more endorsements.
[PL 2017, c. 235, §2 (NEW); PL 2017, c. 235, §41 (AFF).]

**11. Program completer.** "Program completer" means a person who, by successfully completing all of the requirements of an educator preparation program, has qualified for a recommendation for certification as a teacher or an educational specialist or an administrator.
[PL 2017, c. 235, §2 (NEW); PL 2017, c. 235, §41 (AFF).]

**12. Semester hours.** "Semester hours" means units of academic credit that each reasonably approximate one hour of classroom or direct faculty instruction and a minimum of 2 hours of out-of-class student work each week for approximately 15 weeks or an equivalent amount of academic work at an institution of higher education, including laboratory work, internships, practice studio work or other academic work leading toward the awarding of a credit hour of approved study.
[PL 2017, c. 235, §2 (NEW); PL 2017, c. 235, §41 (AFF).]

SECTION HISTORY

PL 2017, c. 235, §2 (NEW). PL 2017, c. 235, §41 (AFF). PL 2021, c. 228, §1 (AMD).

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**§6103. Criminal history record information conviction data**

Beginning July 1, 2000, a credential and renewal under chapters 501 and 502 are subject to the provisions of this section. A person who has complied with the requirements of this section is not required to submit to a subsequent national criminal history record check unless that person has not been continuously employed in a position requiring a credential under chapters 501 and 502. A person who has not been continuously employed in such a position is subject to a subsequent national criminal history record check upon renewal. School vacations are not a break in employment. [PL 2017, c. 235, §1 (AMD); PL 2017, c. 235, §41 (AFF).]

**1. Criminal history record information obtained; reliance.** The commissioner shall obtain criminal history record information containing a record of public criminal history record information as defined in Title 16, section 703, subsection 8 from the Maine Criminal Justice Information System for any person applying for a credential or renewal. The commissioner may rely on information provided by the Maine Criminal Justice Information System within 24 months prior to the issuance of a credential or renewal.
[PL 2017, c. 235, §1 (AMD); PL 2017, c. 235, §41 (AFF).]

**2. Issuance restriction.** Issuance of a credential or renewal to any person whose criminal history record information includes a criminal conviction is subject to the provisions of Title 5, chapter 341 and section 13020.
[PL 2017, c. 235, §1 (AMD); PL 2017, c. 235, §41 (AFF).]

**3. Confidentiality.** Any information obtained pursuant to this section is confidential. The results of criminal history record checks received by the commissioner are for official use only and may not be disseminated outside the department, except that the commissioner may outsource administrative functions of software document management according to federal outsourcing standards as described in 28 Code of Federal Regulations, Section 906.2 (2011) and allow access to these results for that purpose.
[PL 2011, c. 521, §1 (AMD).]

**3-A. Fees.** The Commissioner of Public Safety shall assess a fee set annually by the Commissioner of Education for each initial criminal history record check and a fee set annually by the Commissioner of Education for each renewal criminal history record check required by this section.
[PL 2015, c. 395, §3 (AMD).]

**3-B. Reimbursement of fee.**
[PL 2013, c. 506, §13 (RP).]

**4. Expenses.**
[PL 2005, c. 457, Pt. CC, §2 (RP).]

**4-A. Phase-in plan.** The fingerprinting and approval process established by this section for certain classes of individuals must be phased in as follows:

A. The fingerprinting and approval process must be phased in for all persons regularly employed in a school during the 1999-2000 school year who require department approval to continue in their positions and who have not been fingerprinted pursuant to this section prior to enactment of this subsection. The department shall issue each person a temporary approval card valid through a specified year from 2001 to 2004. Prior to July 1st of the year specified on the temporary approval card, the person must meet the requirements of this section. Once a person has met the requirements of this section, an approval card must be issued; [PL 1999, c. 791, §4 (NEW).]

B. A person placed under contract by a school and subject to the requirements of this section, who has not been fingerprinted prior to the effective date of this subsection, must meet these requirements by July 1, 2002; [PL 1999, c. 791, §4 (NEW).]

C. A person employed as a substitute who has not been fingerprinted prior to the effective date of this subsection must meet the requirements by July 1, 2002. Beginning with the 2003-2004 school year, a person employed as a substitute who needs fingerprinting and a criminal history record check pursuant to section 13011, subsection 8 must meet the requirements of this section within 8 weeks of employment by a school administrative unit. A person employed as a substitute who needs fingerprinting and a criminal history record check must be issued a temporary approval card by the department. The temporary approval card is valid for the first 8 weeks of employment, except that, for a person who has been fingerprinted pursuant to this section prior to the 20th day of employment and who has not received the results of the criminal history record check prior to the 9th week of employment, the temporary approval card remains valid until the commissioner determines whether approval is granted or denied based on the criminal history record information obtained from the State Bureau of Identification; and [PL 2003, c. 184, §1 (AMD).]

D. A regular employee subject to the requirements of this section who begins work in a school after the effective date of this subsection must meet these requirements prior to the 20th day of employment. Beginning with the 2003-2004 school year, a regular employee who needs fingerprinting and a criminal history record check pursuant to section 13011, subsection 8 must meet the requirements of this section within 8 weeks of employment by a school administrative unit. A regular employee who needs fingerprinting and a criminal history record check must be issued a temporary approval card by the department. The temporary approval card is valid for the first 8 weeks of employment, except that, for a person who has been fingerprinted pursuant to this section prior to the 20th day of employment and who has not received the results of the criminal history record check prior to the 9th week of employment, the temporary approval card remains valid until the commissioner determines whether approval is granted or denied based on the criminal history record information obtained from the State Bureau of Identification. [PL 2003, c. 184, §1 (AMD).]

[PL 2003, c. 184, §1 (AMD).]

**5. Criminal record information obtained from the Federal Bureau of Investigation.** The commissioner shall obtain other state and national criminal history record information from the Federal Bureau of Investigation for any person applying for a credential or renewal. The commissioner may rely on information provided by the Federal Bureau of Investigation within 24 months prior to the issuance of a credential or renewal.

[PL 2017, c. 235, §1 (AMD); PL 2017, c. 235, §41 (AFF).]

**6. Fingerprinting.** The applicant shall submit to having fingerprints taken. The Maine State Police, upon payment by the applicant or any other entity required by law of the expenses specified in subsection 3-A, shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the Maine State Police for purposes of this section must be paid over to the Treasurer of State for deposit in the State Police program, Other Special Revenue Funds account in the Department of Public Safety for the purpose of funding the costs of the Department of Public Safety to administer the criminal history record checks under this section.

[PL 2015, c. 267, Pt. SSS, §2 (AMD).]

**7. Use of criminal history record.** State and federal criminal history record information may be used for the purpose of screening educational personnel applicants by the commissioner in order to determine whether issuance of a credential or a renewal to educational personnel is granted or maintained.

[PL 2017, c. 235, §1 (AMD); PL 2017, c. 235, §41 (AFF).]

**8. Applicant's access to criminal history record check.** The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of a criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal record check may inspect and review criminal record information pursuant to Title 16, section 709.
[PL 2013, c. 267, Pt. B, §15 (AMD).]

**9. Right of applicant and commissioner to remove fingerprints from fingerprint file.** Teachers or educational personnel whose credential has expired and who have not applied for renewal of a credential may request in writing that the State Bureau of Identification remove their fingerprints from the bureau's fingerprint file. In response to a written request, the bureau shall remove the requester's fingerprints from the fingerprint file and provide written confirmation of that removal to the requester.

The commissioner may, without notice to an applicant, remove fingerprints from the fingerprint file maintained by the State Bureau of Identification when an applicant has had no active credential for 7 years. An applicant may renew a credential after that applicant's fingerprints have been removed from the fingerprint file upon submitting again to fingerprinting.
[PL 2017, c. 235, §1 (AMD); PL 2017, c. 235, §41 (AFF).]

**10. Criminal History Record Check Fund.** The Criminal History Record Check Fund is created as a dedicated fund within the Department of Education for the transfer of funds from the Department of Public Safety to cover a portion of the cost of a position that issues credentials. The fund may not lapse, but must be carried forward to carry out the purposes of this chapter.
[PL 2017, c. 235, §1 (AMD); PL 2017, c. 235, §41 (AFF).]

**11. Exemptions.** An active duty law enforcement officer from a local law enforcement agency with jurisdiction over a school's premises who assists with school security, safety, emergency preparedness or emergency response or has been assigned other responsibilities concerning the school by the school or the local law enforcement agency is exempt from the provisions of this section.
[PL 2017, c. 155, §1 (NEW).]

SECTION HISTORY

PL 1995, c. 547, §5 (NEW). PL 1997, c. 452, §3 (AMD). PL 1999, c. 35, §§1,2 (AMD). PL 1999, c. 110, §§1,2 (AMD). PL 1999, c. 791, §§1-4 (AMD). PL 2003, c. 184, §1 (AMD). PL 2005, c. 457, §§CC1-4 (AMD). PL 2005, c. 519, §§I1,2 (AMD). PL 2011, c. 521, §§1, 2 (AMD). PL 2013, c. 267, Pt. B, §§14, 15 (AMD). PL 2013, c. 506, §13 (AMD). PL 2013, c. 507, §10 (AMD). PL 2015, c. 267, Pt. SSS, §§1-3 (AMD). PL 2015, c. 395, §§1-3 (AMD). PL 2017, c. 155, §1 (AMD). PL 2017, c. 235, §1 (AMD). PL 2017, c. 235, §41 (AFF).

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public - other



**§17057. Information not public record**

**1. Medical information.** Medical information of any kind in the possession of the retirement system, including information pertaining to diagnosis or treatment of mental or emotional disorders, is confidential and not open to public inspection and does not constitute "public records" as defined in Title 1, section 402, subsection 3. Records containing medical information may be examined by the employee to whom they relate or by the State or participating local district employer of the employee for any purposes related to any claim for workers' compensation or any other benefit. The employee must be advised in writing by the retirement system of any request by the employer to examine the employee's medical records. Medical information obtained pursuant to this section remains confidential, except as otherwise provided by law, and except when involved in proceedings resulting from an appeal pursuant to section 17451, subsection 2.
[PL 2017, c. 46, §1 (AMD).]

**2. Financial and personal information.** The following private financial and personal information of members, beneficiaries or participants in any of the programs of the retirement system in the possession of the retirement system is confidential and not open to public inspection and does not constitute "public records" as defined in Title 1, section 402, subsection 3:

A. Information regarding member, beneficiary or participant accounts with financial institutions, including account numbers; [PL 2017, c. 46, §2 (NEW).]

B. Information regarding member and beneficiary election of payment methods, including elected deductions from those payments; [PL 2017, c. 46, §2 (NEW).]

C. Information regarding participation in defined contribution or deferred compensation plans, including account numbers, investment allocations, contributions, distributions and balances; [PL 2017, c. 46, §2 (NEW).]

D. Information regarding designated beneficiaries; and [PL 2017, c. 46, §2 (NEW).]

E. Information regarding a participant's amount of insurance coverage or group life insurance. [PL 2017, c. 46, §2 (NEW).]
[PL 2017, c. 46, §2 (RPR).]

**3. Home contact information.** Except as provided in this subsection, records of home contact information of members and benefit recipients of any of the programs of the retirement system and of staff members that are in the possession of the retirement system are confidential, not open to public inspection and not public records as defined in Title 1, section 402, subsection 3.

A. For purposes of this subsection, "home contact information" means a home address, home telephone number, home facsimile transmission number or home e-mail address. [PL 2003, c. 632, §1 (NEW).]

B. [PL 2007, c. 47, §1 (RP).]

C. This subsection does not apply to the home address of a member or a benefit recipient of any of the programs of the retirement system used only for membership recruitment purposes by a nonprofit or public organization established to provide programs, services and representation to Maine public sector retirees unless the retirement system member or benefit recipient has signed a form made available by the retirement system indicating that the individual does not authorize disclosure of that individual's home address. The retirement system may not provide information under this subsection to an organization if the retirement system has determined that the organization obtained information for the purpose of membership recruitment but used the information for a purpose other than membership recruitment. [PL 2007, c. 491, §70 (AMD).]
[PL 2007, c. 491, §70 (AMD).]

**4. Investment activity information.** Disclosure of private market investment activity of the retirement system is governed by this subsection.

A. Documentary material, data or information in the possession of the retirement system that consists of trade secrets or commercial or financial information that relates to actual or potential private market investments of the retirement system is confidential and not open to public inspection and does not constitute "public records" as defined in Title 1, section 402, subsection 3 if, in the sole discretion of the retirement system, the disclosure of the material, data or information may:

(1) Impair the retirement system's ability to obtain such material, data or information in the future;

(2) Cause substantial harm to the competitive position of the retirement system or of the person or entity from whom the information was obtained; or

(3) Result in the potential violation of state and federal laws and regulations relating to insider trading. [PL 2011, c. 449, §1 (AMD).]

B. The following information concerning any fund in which the retirement system is invested is not exempt from disclosure:

(1) The retirement system's total commitment to the fund;

(2) The date of the commitment to the fund;

(3) Contributions and distributions made to or received from the fund;

(4) The market value of the investment;

(5) The name of the fund; and

(6) The interim internal rate of return of the fund. [PL 2011, c. 449, §1 (AMD).]

C. For purposes of this subsection, "private market investment" means:

(1) Direct investments in land, timber, mineral rights, private company equity or private company debt;

(2) Indirect investments in limited partnerships, limited liability corporations or other entities that may invest in the investments described in subparagraph (1);

(3) Investments in unregistered securities or funds offered under exemptions provided in Section 144(A) of the Securities Act of 1933, as amended, or Section 3(c)1 or 3(c)7 of the Investment Company Act of 1940, as amended; or

(4) Investments or potential investments of the retirement system pursuant to the state innovation finance program authorized under Title 10, section 1026-T. [PL 2011, c. 449, §1 (NEW).]

[PL 2011, c. 449, §1 (AMD).]

**5. Personnel records of Maine Public Employees Retirement System staff.** The following records are confidential and not open to public inspection and are not public records as defined in Title 1, section 402, subsection 3:

A. Papers relating to applications, examinations or evaluations of applicants. Except as provided in this subsection, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the retirement system for use in the examination or evaluation of applicants for positions as retirement system employees, are confidential.

(1) Notwithstanding any confidentiality provision to the contrary, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.

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

(3) This paragraph does not preclude a union representative from access to personnel records, consistent with paragraph D, that may be necessary for the bargaining agent to carry out collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this paragraph remain confidential and are not open to public inspection; [PL 2011, c. 449, §2 (NEW).]

B. Personal information. Records containing the following information are confidential, except that the records may be examined by the employee to whom they relate when the examination is permitted or required by law:

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

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

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

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

(5) Personal information pertaining to the employee's race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability, marital status, sexual orientation and gender identity; social security number; personal contact information as provided in Title 1, section 402, subsection 3, paragraph O; and personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance; and

*

(6) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written decision, with regard to that employee, is public.

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

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

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

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days.

This paragraph does not preclude a union representative from having access to personnel records that are necessary for the bargaining agent to carry out collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this paragraph remain confidential and are not open for public inspection; [PL 2021, c. 366, §24 (AMD).]

C. Other information to which access by the general public is prohibited by law; and [PL 2011, c. 449, §2 (NEW).]

D. Certain information for grievance and other proceedings. The retirement system may release specific information designated confidential by this paragraph to be used in negotiations, mediation, fact finding, arbitration, grievance proceedings and other proceedings in which the retirement system is a party. For the purpose of this paragraph, "other proceedings" means unemployment compensation proceedings, workers' compensation proceedings, human rights proceedings and labor relations proceedings. [PL 2011, c. 449, §2 (NEW).]

[PL 2021, c. 366, §24 (AMD).]

**6. Treatment of confidential information.** Confidential information provided under subsection 5 is governed by the following.

A. Only the information that is necessary and directly related to the proceeding may be released. [PL 2011, c. 449, §2 (NEW).]

B. The proceeding for which the confidential information is provided must be private and not open to the public if possible. If the proceeding is open to the public, the confidential information may not be disclosed except exclusively in the presence of the fact finder, the parties and counsel of record and the employee who is the subject of the proceeding and provisions are made to ensure that there is no public access to the confidential information. [PL 2011, c. 449, §2 (NEW).]

C. The retirement system may use this confidential information in proceedings and provide copies to an employee organization if that organization is a party to the proceedings and the information is directly related to those proceedings as defined by the applicable collective bargaining agreement. Confidential personnel records in the possession of the retirement system are not open to public inspection and are not public records. [PL 2011, c. 449, §2 (NEW).]

[PL 2011, c. 449, §2 (NEW).]

SECTION HISTORY

PL 1989, c. 76 (NEW). PL 1991, c. 480, §2 (RPR). PL 1991, c. 580, §2 (AMD). PL 1991, c. 824, §A7 (RPR). PL 2003, c. 632, §1 (AMD). PL 2005, c. 149, §§1,2 (AMD). PL 2007, c. 47, §§1, 2 (AMD). PL 2007, c. 491, §70 (AMD). RR 2009, c. 2, §3 (COR). PL 2009, c. 633, §1 (AMD). PL 2011, c. 449, §§1, 2 (AMD). PL 2017, c. 46, §§1, 2 (AMD). PL 2021, c. 366, §24 (AMD).

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public -other



## §4706. Records confidential

**1. Confidential information.** Records containing the following information are deemed confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Any information acquired by an authority or a member, officer, employee or agent of an authority from applicants for residential tenancy in housing owned, financed, assisted or managed by an authority or from any residential tenants of such housing or from any 3rd person pertaining to any applicant for tenancy or to any tenant of such housing; [PL 1993, c. 175, §1 (AMD).]

B. Any written or recorded financial statement, as determined by an authority, of an individual submitted to an authority or a member, officer, employee or agent of an authority, in connection with an application for, or receipt of, a grant, mortgage or mortgage insurance; [PL 2007, c. 562, §1 (AMD).]

C. Any information acquired by the Maine State Housing Authority or a state public body, private corporation, copartnership, association, fuel vendor, private contractor or individual, or an employee, officer or agent of any of those persons or entities, providing services related to weatherization, energy conservation, homeless assistance or fuel assistance programs of the Maine State Housing Authority, when that information was provided by the applicant for, or recipient of, those services or by a 3rd person; [PL 2007, c. 562, §2 (AMD).]

D. Any statements of financial condition or information pertaining to financial condition submitted to any of the persons or entities set forth in paragraph C in connection with an application for services related to weatherization, energy conservation, homeless assistance or fuel assistance programs of the Maine State Housing Authority; and [PL 2007, c. 562, §3 (AMD).]

E. The address of a shelter or other living accommodations for victims of domestic violence. [PL 2007, c. 562, §4 (NEW).]

[PL 2007, c. 562, §§1-4 (AMD).]

**2. Wrongful disclosure prohibited.** No member, officer, employee or agent of an authority may knowingly divulge or disclose information declared confidential by this section, except that:

A. An authority may make such full and complete reports concerning administration of its programs as required by the Federal Government, any agency or department of the Federal Government, or the Legislature; [PL 1993, c. 175, §3 (AMD).]

B. An authority may publish statistics or other information of a general nature drawn from information declared confidential by this section, provided that the publication is accomplished in a manner which preserves confidentiality; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. An authority may comply with a subpoena, request for production of documents, warrant or court order that appears on its face to have been issued or made upon lawful authority; [PL 1993, c. 175, §3 (AMD).]

D. In any litigation or proceeding in which an authority is a party, the authority may introduce evidence based on any information that is deemed confidential and is within the control or custody of the authority; [PL 2019, c. 313, §1 (AMD).]

E. Any person or agency directly involved in the administration or auditing of weatherization, energy conservation or fuel assistance programs of the Maine State Housing Authority and any agency of the State with a legitimate reason to know must be given access to those records described in subsection 1, paragraphs C and D; and [PL 2019, c. 313, §2 (AMD).]

F. The Maine State Housing Authority may provide records to the Efficiency Maine Trust pursuant to Title 35-A, section 10104, subsection 4, paragraph A, subparagraph (2). [PL 2019, c. 313, §3 (NEW).]

[PL 2019, c. 313, §§1-3 (AMD).]

**3. Waiver.** This section shall not be construed to limit in any way the right of any person whose interest is protected by this section to waive, in writing or otherwise, the benefits of that protection.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

**4. Penalty.** A member, officer, employee or agent of an authority who violates subsection 2 commits a civil violation for which a forfeiture of not more than $200 may be adjudged against the member, officer, employee or agent of an authority for each violation. For the purpose of applying penalties under this subsection, a separate violation is deemed to have occurred with respect to each separate act of disclosure.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

**5. Confidentiality of personnel records.** The following records are confidential and not open to public inspection:

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

(1) Applications, resumes and letters and notes of reference pertaining to the applicant hired, other than those letters and notes of reference expressly submitted in confidence, are public records after the applicant is hired.

(2) Telephone numbers are not public records if they are designated as unlisted or unpublished in an application, resume or letter or note of reference; [PL 2017, c. 234, §8 (NEW).]

B. Authority records pertaining to an identifiable employee and containing the following:

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

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

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

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

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action; and

(6) Personal information, including that which pertains to the employee's:

(a) Age;

(b) Ancestry, ethnicity, genetic information, national origin, race or skin color;

(c) Marital status;

(d) Mental or physical disabilities;

(e) Personal contact information, as described in Title 1, section 402, subsection 3, paragraph O;

(f) Personal employment choices pertaining to elected payroll deductions, deferred compensation, saving plans, pension plans, health insurance and life insurance;

(g) Religion;

(h) Sex, sexual orientation or gender identity; or

(i) Social security number; and [PL 2021, c. 366, §31 (AMD).]

C. Other information to which access by the general public is prohibited by law. [PL 2017, c. 234, §8 (NEW).]

[PL 2021, c. 366, §31 (AMD).]

**6. Employee right to review.** On written request from an employee or former employee, the authority shall provide the employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the authority has a personnel file for that employee. The review must take place during normal office hours at the location where the personnel files are maintained. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits that the authority may possess. The records described in subsection 5, paragraph B may also be examined by the employee to whom the records relate, as provided in this subsection.

[PL 2017, c. 234, §8 (NEW).]

**7. Constitutional obligations of a prosecutor.** Notwithstanding this section or any other provision of law, subsection 5 does not preclude the disclosure of confidential personnel records and the information contained in those records to the Attorney General, a deputy attorney general, an assistant attorney general, a district attorney, a deputy district attorney, an assistant district attorney or the equivalent departments or offices in a federal jurisdiction that are related to the determination of and compliance with the constitutional obligations of the State or the United States to provide discovery to a defendant in a criminal matter. A person or entity participating in good faith disclosure under this subsection or participating in a related proceeding is immune from criminal and civil liability for the act of disclosure or for participating in the proceeding.

[PL 2017, c. 234, §8 (NEW).]

SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD). PL 1993, c. 175, §§1-4 (AMD). PL 2007, c. 562, §§1-4 (AMD). PL 2017, c. 234, §8 (AMD). PL 2019, c. 313, §§1-3 (AMD). PL 2021, c. 366, §31 (AMD).

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public- other



## §114. Utility personnel records

**1. Confidential.** The following records of public utilities are confidential and, except as otherwise provided in subsection 3, are excluded from the books, accounts, papers, records, memoranda, documents and information otherwise available to the commission under this Title and may not be open to public inspection:

A. Materials prepared for and used specifically in the examination or evaluation of applicants for positions with a public utility, including working papers, research materials, records and examinations; [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. Records containing the following:

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

(2) Performance evaluations and personal references;

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

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

* (5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations or any other information or materials that may result in disciplinary action; or [PL 1987, c. 141, Pt. A, §6 (NEW).]

C. Other information to which access by the general public is prohibited by law. [PL 1987, c. 141, Pt. A, §6 (NEW).]

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**2. Compliance.** Failure or refusal by any public utility or any officer, agent or attorney of any public utility to comply with any order, data request or subpoena calling for the production of those records other than an order issued pursuant to subsection 3, shall not serve as the basis for any civil or criminal fine, penalty or forfeiture.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

**3. In camera inspection.** Upon request by the commission staff, the Public Advocate or intervenor in a matter before the commission or upon the commission's own motion and for good cause shown, the commission may order a public utility to produce for in camera inspection by the commission or hearing examiner the records designated confidential under subsection 1. The employee whose records are the subject of such a request shall be notified by the commission of the request and shall be given the opportunity to be heard before an order to produce is issued. If the commission or hearing examiner determines after in camera inspection that a record is reasonably relevant to the matter before it and that production of the record is not unjust or unlawful and that the materiality of the record outweighs any harm to the employee from its disclosure, the commission or hearing examiner may order that the record be made a part of the discovery or evident aspects of the proceedings, subject to the terms and conditions that are just, due consideration being given to the privacy interests of the employee involved.
[PL 1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

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APPROVED
JUNE 12, 2023
BY GOVERNOR

CHAPTER
159
PUBLIC LAW

**STATE OF MAINE**

**IN THE YEAR OF OUR LORD**

**TWO THOUSAND TWENTY-THREE**

**H.P. 892 - L.D. 1397**

# An Act to Implement the Recommendations of the Right To Know Advisory Committee Concerning Records of Disciplinary Actions Against Public Employees

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 5 MRSA §7070, sub-§2, ¶E,** as amended by PL 1997, c. 770, §1, is further amended to read:

E. Except as provided in section 7070-A, complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. <u>The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action.</u> If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

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

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

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

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days;

**Sec. 2. 30-A MRSA §503, sub-§1, ¶B,** as amended by PL 2019, c. 451, §2, is further amended by amending subparagraph (5) to read:

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

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

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

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

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and

**State, County and Municipal Employee Disciplinary Records – Legislative History**

In the Nineteenth Annual Report of the Right to Know Advisory Committee, the Advisory Committee issued a recommendation to the 2025 Committee to 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 (reproduced from the report below).

**Recommendation:**
*Review provisions of law relating to state, county and municipal employee personnel records and consider whether establishing consistency among provisions is appropriate.*

> The Advisory Committee recommends 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. This 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 following tables outline the legislative history of the specific statutory provisions governing public employee disciplinary records in Title 5, section 7070, Title 30-A, section 503, and Title 30-A, section 2702.

## STATE EMPLOYEES

### State Employees 5 MRSA §7070(2)(E)

| | | |
|---|---|---|
| Enacted | PL 1985, c. 785, Pt. B, §38 (pp. 3980-3981) | LD 2392 |
| Amended | PL 1991, c. 229 §1 | LD 878 |
| Amended | PL 1991, c. 729 §1 | LD 2018 |
| Amended | PL 1997, c. 124 §2 | LD 825 |
| Amended | PL 1997, c. 770 §1 | LD 1913 |
| Amended | PL 2023, c. 159 §1 | LD 1397 |
| Amended | PL 2023, c. 615 §2 | LD 2250 |

### State Correctional Facility Employees 5 MRSA §7070(2)(F)

| | | |
|---|---|---|
| Enacted | PL 2023, c. 615 §3 | LD 2250 |
| Amended | PL 2023, c. 646 Pt. B, §B-1 (p.19) | LD 2290 |

### State Law Enforcement Officers 5 MRSA §7070-A

| | | |
|---|---|---|
| Enacted | PL 1991, c. 729 §2 | LD 2018 |

*Specific only to the use of deadly or physical force by law enforcement officers - regardless of whether disciplinary action is taken, the findings of any investigation into an officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.*

## COUNTY EMPLOYEES

### County Employees 30-A MRSA §503(1)(B)(5)

| | | |
|---|---|---|
| Enacted | PL 1987, c. 737, Pt. A, §2 (pp. 1389-1390) | LD 2538 |
| Amended | PL 1991, c. 229 §2 | LD 878 |
| Amended | PL 1997, c. 770 §2 | LD 1913 |
| Amended | PL 2019, c. 451 §2 | LD 1790 |
| Amended | PL 2023, c. 159 §2 | LD 1397 |

### County Law Enforcement Officers 30-A MRSA §503(1-A)

| | | |
|---|---|---|
| Enacted | PL 1991, c. 729 §6 | LD 2018 |

*Specific only to the use of deadly or physical force by law enforcement officers - regardless of whether disciplinary action is taken, the findings of any investigation into an officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.*

### County Jail Employees 30-A MRSA §503(1-B)

| | | |
|---|---|---|
| Enacted | PL 2023, c. 615 §4 | LD 2250 |

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## MUNICIPAL EMPLOYEES

### Municipal Employees 30-A MRSA §2702(1)(B)(5)

| | | |
|---|---|---|
| Enacted | PL 1987, c. 737, Pt. A, §2 (pp. 1453-1454) | LD 2538 |
| Amended | PL 1991, c. 229 §3 | LD 878 |
| Amended | PL 1997, c. 770 §3 | LD 1913 |

### Municipal Law Enforcement Officers 30-A MRSA §2702(1-A)

| | | |
|---|---|---|
| Enacted | PL 1991, c. 729 §7 | LD 2018 |

*Specific only to the use of deadly or physical force by law enforcement officers - regardless of whether disciplinary action is taken, the findings of any investigation into an officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.*

## STATE EMPLOYEES

### State Employees 5 MRSA §7070(2)(E)

| Enacting Statute (PL 1985) | Current Statute 2023 (PL 2023) |
|---|---|
| **E.** Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action shall no longer be confidential after it is completed; and | **E.** Except as provided in paragraph F and section 7070-A, complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.<br><br>For purposes of this paragraph, "final written decision" means:<br><br>**(1)** The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or<br>**(2)** If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.<br><br>A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and |

### State Correctional Facility Employees 5 MRSA §7070(2)(F)

| Enacting Statute (PL 2023) | Current Statute (PL 2023) |
|---|---|
| **F.** In the case of an allegation of sexual misconduct or sexual harassment within a correctional facility, a determination that the allegation was substantiated, unsubstantiated or unfounded, except that the determination may be disclosed to the alleged victim. Unless the allegation is determined to be unfounded, the following information may also be shared with the alleged victim:<br>**(1)** Whether the individual alleged to have engaged in the sexual misconduct or sexual harassment is still assigned to the same work location where the sexual misconduct or sexual harassment allegedly occurred;<br>**(2)** Whether the individual under subparagraph (1) is still employed at the correctional facility;<br>**(3)** Whether the individual under subparagraph (1) has been criminally charged or convicted of a crime arising out of the allegation of sexual misconduct or sexual harassment; and<br>**(4)** Whether the prosecuting agency declined to indict the individual under subparagraph (1) based on the allegation of sexual misconduct or sexual harassment. | ***Only difference is in subparagraph (4), amended to read:***<br><br>**(4)** Whether the prosecuting agency declined to seek an indictment or the grand jury declined to indict the individual under subparagraph (1) based on the allegation of sexual misconduct or sexual harassment. |

## STATE EMPLOYEES

### State Law Enforcement Officers 5 MRSA §7070-A

| No Changes Since Statute Enacted | (PL 1991) |
|---|---|

**§7070-A. Personnel records; deadly force or physical force by law enforcement officer**

The name of a law enforcement officer is not confidential under section 7070, subsection 2, paragraph E in cases involving:

1. **Deadly force.** The use of deadly force by a law enforcement officer; or
2. **Physical force.** The use of physical force by a law enforcement officer resulting in death or serious bodily injury.

In cases specified in subsections 1 and 2, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.

## COUNTY EMPLOYEES

**County Employees 30-A MRSA §503(1)(B)(5)**

| **Enacting Statute (PL 1987)** | **Current Statute (PL 2023)** |
|---|---|
| **(5)** Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after it is completed; and | **§503. Personnel records**<br>**(5)** Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.<br><br>For purposes of this subparagraph, "final written decision" means:<br>**(a)** The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or<br>**(b)** If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.<br><br>A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and |

**County Law Enforcement Officers 30-A MRSA §503(1-A)**

| **No Changes Since Statute Enacted** | **(PL 1991)** |
|---|---|
| **1-A. Investigations of deadly force or physical force by law enforcement officer.** The name of a law enforcement officer is not confidential under subsection 1, paragraph B, subparagraph (5) in cases involving:<br><br>**A.** The use of deadly force by a law enforcement officer; or<br>**B.** The use of physical force by a law enforcement officer resulting in death or serious bodily injury.<br><br>In cases specified in paragraphs A and B, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case. | |

## COUNTY EMPLOYEES

**County Jail Employees 30-A MRSA §503(1-B)**

| **No Changes Since Statute Enacted** | **(PL 2023)** |
|---|---|
| **1-B. Investigation of allegation of sexual misconduct or sexual harassment by county jail employee**. Notwithstanding subsection 1, paragraph B, subparagraph (5), in the case of an allegation of sexual misconduct or sexual harassment within a county jail or detention facility, a determination that the allegation was substantiated, unsubstantiated or unfounded may be disclosed to the alleged victim. Unless the allegation is determined to be unfounded, the following information may also be shared with the alleged victim:<br><br>**A**. Whether the individual alleged to have engaged in the sexual misconduct or sexual harassment is still assigned to the same work location where the sexual misconduct or sexual harassment allegedly occurred;<br>**B.** Whether the individual under paragraph A is still employed at the county jail or detention facility;<br>**C.** Whether the individual under paragraph A has been criminally charged or convicted of a crime arising out of the allegation of sexual misconduct or sexual harassment; and<br>**D.** Whether the prosecuting agency declined to seek an indictment or the grand jury declined to indict the individual under paragraph A based on the allegation of sexual misconduct or sexual harassment. | |

## MUNICIPAL EMPLOYEES

### Municipal Employees 30-A MRSA §2702(1)(B)(5)

| Enacting Statute (PL 1987) | Current Statute (PL 1997) |
|---|---|
| **(5)** Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after it is completed. The decision shall state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action; and | **(5)** Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.<br><br>For purposes of this subparagraph, "final written decision" means:<br><br>**(a)** The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or<br>**(b)** If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.<br><br>A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and |

### Municipal Law Enforcement Officers 30-A MRSA §2702(1-A)

| No Changes Since Statute Enacted (PL 1991) |
|---|
| **1-A. Investigations of deadly force or physical force by law enforcement officer.** The name of a law enforcement officer is not confidential under subsection 1, paragraph B, subparagraph (5) in cases involving:<br><br>**A.** The use of deadly force by a law enforcement officer; or<br>**B.** The use of physical force by a law enforcement officer resulting in death or serious bodily injury.<br><br>In cases specified in paragraphs A and B, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case. |

# Part B Materials

## 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.

# 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.