

Public Records Exceptions for Review by RTKAC in 2026

Titles 33-39A

REF #	Statute	Description	Entity	Agency Proposed Action	Response PDF Page	Analyst Notes
1	34-A MRSA §1208, sub-§8(A)(1)	Title 34-A, section 1208, subsection 8, paragraph A: Registry of the names, phone numbers and other contact information for attorneys who represent incarcerated persons, when registry is in the possession of jails or correctional facilities	MDOC	No changes recommended Continuation of exception supported	22	No changes recommended
2	34-A MRSA §1212	Title 34-A, section 1212, relating to personal information of Department of Corrections employees and contractors	MDOC	No changes recommended Continuation of exception supported	27	Defining confidential documents as "not a public record" may be duplicative per drafting manual
3	34-A MRSA §1216, sub-§1	Title 34-A, section 1216, subsection 1, relating to orders of commitment, medical and administrative records, applications and reports pertaining to any person receiving services from Department of Corrections	MDOC	No changes recommended Continuation of exception supported	33	May need changes to conform with drafting manual
4	34-A MRSA §1216, sub-§6	Title 34-A, section 1216, subsection 6, relating to documents used to screen or assess clients of the Department of Corrections	MDOC	No changes recommended Continuation of exception supported	41	Can be simplified to conform with drafting manual
5	34-A MRSA §1402(14)(A)(1)	Title 34-A, section 1402, subsection 14, paragraph A: Registry of the names, phone numbers and other contact information for attorneys who represent incarcerated persons, when registry is in the possession of the Department of Corrections	MDOC	No changes recommended Continuation of exception supported	51	No changes recommended
6	34-A MRSA §5210, sub-§4	Title 34-A, section 5210, subsection 4, relating to the State Parole Board report to the Governor	MDOC, State Parole Board	Continuation of exception supported DOC notes that The Governor's Board on Executive Clemency was established by an Executive Order and a similar statute may be beneficial to cover the Clemency Board	56	No changes recommended re: existing statute. The Executive Order does contain provisions re: confidentiality of the Clemency board.
7	34-A MRSA §9877, sub-§4	Title 34-A, section 9877, subsection 4, relating to the release by the Interstate Commission for Adult Offender Supervision of records that adversely affect personal privacy rights or proprietary interests	Interstate Commission for Adult Offender Supervision	No changes recommended Continuation of exception supported	62	No changes recommended
8	34-A MRSA §9903, sub-§8	Title 34-A, section 9903, subsection 8, relating to the release by the Interstate Commission for Juveniles of records that adversely affect personal privacy rights or proprietary interests	Interstate Commission for Adult Offender Supervision	No changes recommended Continuation of exception supported	70	No changes recommended
9	34-A MRSA §11221, sub-§9-A	Title 34-A, section 11221, subsection 9-A, relating to sex offender registry information created, collected or maintained by the State Bureau of Identification	State Bureau of Identification	No changes recommended Continuation of exception supported	80	"The following are public records" is likely unnecessary
10	34-A MRSA §11221, sub-§13	Title 34-A, section 11221, subsection 13, relating to sex offender registry information in electronic form about a registrant	State Bureau of Identification	No changes recommended Continuation of exception supported	89	No changes recommended

11	34-A MRSA §11281, sub-§9	Title 34-A, section 11281, subsection 9, relating to sex offender registry information created, collected or maintained by the State Bureau of Identification	State Bureau of Identification	No changes recommended Continuation of exception supported	98	No changes recommended
12	34-A MRSA §11281, sub-§12	Title 34-A, section 11281, subsection 12, relating to sex offender registry information in electronic form about a registrant	State Bureau of Identification	No changes recommended Continuation of exception supported	107	No changes recommended
13	34-B MRSA §1207, sub-§1	Title 34-B, section 1207, subsection 1, relating to orders of commitment and medical and administrative records, applications and reports pertaining to any client of Department of Health and Human Services	DHHS	No response received as of 10/29/2026	N/A	"shall be kept confidential" can be simplified & "and may not be disclosed by any person" likely duplicative
14	34-B MRSA §1223, sub-§10	Title 34-B, section 1223, subsection 10, relating to information about a person with intellectual disabilities or autism accessed by the Maine Developmental Services Oversight and Advisory Board	Maine Developmental Services Oversight and Advisory Board	No changes recommended Continuation of exception supported	124	No changes recommended
15	34-B MRSA §3864, sub-§5	Title 34-B, section 3864, subsection 5, relating to mental health involuntary commitment hearings	Maine Judicial Branch	No changes recommended Defers to legislature as to continuation	127	Defining confidential documents as "not a public record" may be duplicative per drafting manual
16	34-B MRSA §3864, sub-§12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	State Bureau of Identification	No changes recommended Continuation of exception supported	145	Defining confidential documents as "not a public record" may be duplicative per drafting manual
17	34-B MRSA §5005-A, sub-§5	Title 34-B, section 5005-A, subsection 5, relating to records and accounts concerning request for action by advocacy agency for persons with intellectual disabilities or autism	Disability Rights Maine	No response received as of 10/29/2026	N/A	Paragraph C could be modified with more affirmative construction & simplification "The records are confidential and may be released only with the written consent from..."
18	34-B MRSA §5605, sub-§15	Title 34-B, section 5605, subsection 15, relating to records of persons receiving intellectual disabilities or autism services	Various Custodians	No response received as of 10/29/2026	N/A	Can be simplified
19	34-B MRSA §7014, sub-§1	Title 34-B, section 7014, subsection 1, relating to court proceedings concerning sterilization	Maine Judicial Branch	No changes recommended Defers to legislature as to continuation	163	Unclear
20	35-A MRSA §114, sub-§1	Title 35-A, section 114, subsection 1, relating to utility personnel records, not open to the Public Utilities Commission	Public Utilities Commission	No changes recommended Continuation of exception supported	171	Simplify to "The following records of public utilities are confidential except as otherwise provided in subsection 3:"
21	35-A MRSA §704, sub-§5	Title 35-A, section 704, subsection 5, relating to utility records concerning customer information, Consumer Assistance Division, Public Utilities Commission	Public Utilities Commission	No changes recommended Continuation of exception supported	178	Defining confidential documents as "not a public record" may be duplicative per drafting manual
22	35-A MRSA §1311-A	Title 35-A, section 1311-A, relating to Public Utilities Commission protective orders	Public Utilities Commission	No changes recommended Continuation of exception supported	186	Confidential vs. public records in the lead-in.

23	35-A MRSA §1311-B, sub-§1, 2, 4	Title 35-A, section 1311-B, subsections 1, 2 and 4, relating to public utility technical operations information	Public Utilities Commission	No changes recommended Continuation of exception supported	193	Defining confidential documents as "not a public record" may be duplicative per drafting manual Could simplify "designated as confidential" to just confidential
24	35-A MRSA §1316-A	Title 35-A, section 1316-A, relating to Public Utilities Commission communications concerning utility violations	Public Utilities Commission	No changes recommended Continuation of exception supported	199	No changes recommended*
25	35-A MRSA §7221, sub-§5	Title 35-A, section 7221, subsection 5, paragraph B, relating to competitive information about the extent of service by providers to determine whether to relieve Provider of Last Resort designation	Public Utilities Commission	No changes recommended Continuation of exception supported	208	Defining confidential documents as "not a public record" may be duplicative per drafting manual
26	35-A MRSA §7225-A, sub-§1	Title 25-A, section 7225-A, subsection 1, relating to service quality metrics report submitted by incumbent local exchange carrier (ILEC) to the Public Utilities Commission	Public Utilities Commission	No changes recommended Continuation of exception supported	214	Defining confidential documents as "not a public record" may be duplicative per drafting manual
27	35-A MRSA §8703, sub-§5	Title 35-A, section 8703, subsection 5, relating to telecommunications relay service communications	Various Custodians	Would defer any changes to AG's Office Continuation of exception supported	220	Can simplify language
28	35-A MRSA §9207, sub-§1	Title 35-A, section 9207, subsection 1, relating to information about communications service providers	Maine Connectivity Authority	No changes recommended at this point, though there are clarifications sought in future legislation Continuation of exception supported	225	Defining confidential documents as "not a public record" may be duplicative per drafting manual. Language re: designating info as confidential could be simplified
29	35-A MRSA §9408, sub-§§1 and 2	Title 35-A, section 9408, subsection 1: Maine Connectivity Authority – information about communications service providers if public access could compromise security of public utility systems or specific information is of a competitive or proprietary nature	Maine Connectivity Authority	No changes recommended at this point, though there are clarifications sought in future legislation Continuation of exception supported	232	Defining confidential documents as "not a public record" may be duplicative per drafting manual. Language re: designating info as confidential could be simplified
30	35-A MRSA §10106, sub-§1	Title 35-A, section 9207, subsection 1, paragraph A, relating to social security numbers included in certain records of the Efficiency Maine Trust	Efficiency Maine Trust	See questionnaire for suggested changes Continuation of exception supported	238	Can simplify language
31	35-A MRSA §10313(9)	Title 35-A, section 10313, subsection 9: Competitive solicitation proposals and contract negotiation materials possessed by a new agency, the Department of Energy Resources.	Department of Energy Resources	Supports the exception, but notes it has not been used yet as it is new.	246	No changes recommended
32	36 MRSA §191	Title 36, section 191, relating to the confidentiality of tax returns	Maine Revenue Services	No changes recommended Continuation of exception supported	261	No changes recommended
33	36 MRSA §194-D, sub-§4	Title 36, section 194-D, subsection 4, relating to criminal background check information for "affected persons" with access to federal tax information obtained by Maine Revenue Services or applicants to the bureau	Maine Revenue Services	No changes recommended Continuation of exception supported	272	Defining confidential documents as "not a public record" may be duplicative per drafting manual

34	36 MRSA §579	Title 36, section 579, relating to the Maine Tree Growth Tax Law concerning forest management plans	DACF, Bureau of Forestry	No response received as of 10/14/2026	N/A	Defining confidential documents as "not a public record" may be duplicative per drafting manual
35	36 MRSA §581-G, sub-§3	Title 36, section 581-G, subsection 3, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	DACF, Bureau of Forestry	No response received as of 10/14/2026	N/A	No changes recommended
36	36 MRSA §653, sub-§1	Title 36, section 653, subsection 1, paragraph G, relating to applications and proof of entitlement for veterans property tax exemption	Maine Revenue Services, Various Custodians	No changes recommended Continuation of exception supported	290/293	The exemptions under this section are discontinued beginning with property tax years beginning 4/1/2027.
37	36 MRSA §841, sub-§2	Title 36, section 841, subsection 2, relating to property tax abatement application information and proceedings	Maine Revenue Services, Various Custodians	No changes recommended Continuation of exception supported	304/307	No changes recommended
38	36 MRSA §4316, sub-§4	Title 36, section 4316, subsection 4, relating to wild blueberries audits, Department of Agriculture, Conservation and Forestry	DACF	No response received as of 10/14/2026	N/A	Can simplify language
39	36 MRSA §6271, sub-§2	Title 36, section 6271, subsection 2, relating to information and communications relating to an application under a municipal property tax deferral program for senior citizens	Maine Revenue Services, Various Custodians	No changes recommended Continuation of exception supported	320	No changes recommended
40	36 MRSA §6760	Title 36, section 6760, relating to employment tax increment financing	Maine Revenue Services	No changes recommended Continuation of exception supported	335	No changes recommended

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

Friday, October 30, 10:30 a.m.

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

1. Introductions
2. Review of Public Records Exceptions Titles 34-A through 36
3. Confirm future meeting dates
4. Adjourn

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

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

Suggested standardized language for public records exceptions

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

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

- ❖ **Specific examples**

- 1. Designating a record as confidential**

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

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

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

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

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

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

17-A MRSA §2108. Confidentiality of victim records

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

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

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

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

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

- (1) To department employees who are responsible for carrying out this chapter;*
- (2) Pursuant to court order or subpoena issued by a court;*
- (3) With written permission of the registered patient or the patient's guardian, if the patient is under guardianship, or a parent, if the patient has not attained 18 years of age;*
- (4) As permitted or required for the disclosure of health care information pursuant to section 1711-C;*

Suggested standardized language for public records exceptions

(5) To a law enforcement official for verification purposes. The records may not be disclosed further than necessary to achieve the limited goals of a specific investigation; and

(6) To a registered patient's treating medical provider and to a registered patient's registered caregiver for the purpose of carrying out this chapter.

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

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

OR

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

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

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

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

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

OR

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

A. A notice of an adjudicatory hearing under Title 5, chapter 375, subchapter IV has been issued;

B. The complaint has been listed on a meeting agenda of the commission;

C. A consent agreement has been executed; or

D. A letter of dismissal has been issued or the investigation has otherwise been closed.

OR

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

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

Suggested standardized language for public records exceptions

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

OR

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

OR

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

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

October 8, 2021

TO: Members, Right To Know Advisory Committee

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

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

INTRODUCTION

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

"PUBLIC RECORDS"

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

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

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

THE ROAD TO STANDARDIZED LANGUAGE

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

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

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

We have been unable to find legal authority – statutory or caselaw – to support the dichotomy represented by these informal interpretations. Many statutes over the years have been drafted to include both terms, i.e., that a record is confidential and not a public record. Such language provides implied support for the distinction, but there is no indication in any of these statutes that such wording is anything more than belt and suspenders to ensure the public is not given access to the specific record. That the difference in wording results in different interpretations appears unintentional when six of the 22 public records exceptions listed in Title 1, section 402, subsection 3, are reviewed in detail. Paragraphs H, L, M, Q, U and V¹ all spell out specific records that are not public records, and then explicitly authorize the sharing with or disclosure to certain individuals or entities for express purposes. If being “not a public record”

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

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

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

SUGGESTED LANGUAGE

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

Designating a record as confidential

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

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

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

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

Example from 18-C MRSA §9-310:

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

Authorizing disclosure of a confidential record

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

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

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

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

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

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

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

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

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

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

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

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

17-A MRSA §2108. Confidentiality of victim records

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Example from former 20-A MRSA §6455:

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

Example from 8 MRSA §1006, sub-§7:

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

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

Example from 22 MRSA §7250, sub-§3:

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

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

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

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

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

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

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

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

Example from 4 MRSA §1806, sub-§2 ¶E:

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

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

Example from 38 MRSA §100-A

§100-A. Confidentiality of complaints and investigative records

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

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

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

Example from 23 MRSA §63, sub-§3:

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

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

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

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

Example from former 20-A MRSA §6455:

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

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

Example from 22 MRSA §4008, sub-§3-A:

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

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

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

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

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

CONCLUSION

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

¹ From 1 MRSA Section 402, subsection 3:

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

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

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

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

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

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

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

Reference #1

34-A MRSA §1208, sub-§8(A)(1)

§1208. Standards for county and municipal detention facilities

The commissioner shall establish standards, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, for county and municipal jails, holding facilities and short-term detention areas, referred to in this section as county and municipal detention facilities, as follows and shall enforce them. [PL 1983, c. 581, §§10, 59 (NEW).]

1. Establishment. The commissioner shall establish both mandatory and desirable standards for all county and municipal detention facilities, setting forth requirements for maintaining safe, healthful and secure facilities. Standards adopted pursuant to this subsection must be evidence-based, must take into consideration cost impact and must reflect best practices for the operation and administration of jails.

[PL 2021, c. 171, §1 (AMD).]

2. Inspections. Inspections of county and municipal detention facilities are governed as follows.

A. The commissioner shall conduct a comprehensive inspection of each county and municipal detention facility every 2 years, in order to provide the department with information, verified by on-site inspection, regarding compliance with all department standards. The commissioner may dispense with this inspection if, when it is due, the facility is accredited by a nationally recognized correctional accrediting body. [PL 2013, c. 27, §1 (AMD).]

B. The commissioner shall conduct every 2 years no fewer than 3 inspections of each county and municipal detention facility that are in addition to any comprehensive inspections conducted pursuant to paragraph A in order to determine continued compliance with standards. [PL 2013, c. 27, §2 (AMD).]

C. The commissioner may inspect a county or municipal detention facility at any time, without prior notice, to determine compliance with standards. [PL 1983, c. 581, §§10, 59 (NEW).]

C-1. As part of any inspection, the commissioner may access any records, including, but not limited to, the records of persons detained or committed in the facility, as considered necessary by the commissioner in order to determine compliance with standards. [PL 2007, c. 102, §6 (NEW).]

D. The commissioner shall prepare a written report of each inspection and shall send a copy of the report to appropriate county or municipal officials within 15 days after the inspection.

(1) The report shall summarize inspection findings.

(2) The report shall list the standards with which the facility does not comply and set forth the reasons for noncompliance. [PL 1983, c. 581, §§10, 59 (NEW).]

E. The commissioner shall order the noncomplying county or municipality to respond to this report in accordance with subsection 3. [PL 1983, c. 581, §§10, 59 (NEW).]

[PL 2013, c. 27, §§1, 2 (AMD).]

3. Standards compliance. Each county and municipal detention facility shall, unless granted a variance pursuant to subsection 5, comply with the mandatory standards established by the commissioner.

A. Within 60 days from the receipt of an inspection report for each mandatory standard listed in subsection 2, paragraph D, subparagraph (2), the county or municipality shall either:

(1) Correct deficiencies listed in the report and submit to the department a written response listing the corrections made; or

(2) Offer a plan to correct those deficiencies for consideration by the department. [PL 1983, c. 581, §§10, 59 (NEW).]

B. If a county or municipality fails to correct deficiencies and offers no plan of correction, or if the plan of correction offered to the department is determined inadequate by the commissioner, the commissioner shall determine an appropriate action to restrict or modify the operations of the facility, consistent with the nature of the uncorrected deficiencies, which action may include ordering an entire facility closed until the deficiencies have been corrected.

(1) Before any such action is taken, the commissioner shall notify the county or municipality in writing of the planned action and shall offer the opportunity to meet and discuss the planned action.

(2) If a meeting is not requested by the county or municipality within 15 days after the county or municipality receives notice of the planned action, or if a meeting is held and fails to produce a plan of correction acceptable to the commissioner, the commissioner shall take the planned action. [PL 1983, c. 581, §§10, 59 (NEW).]

[PL 1983, c. 581, §§10, 59 (NEW).]

4. Emergency powers. The commissioner may take immediate action in response to noncompliance with a mandatory standard, if the noncompliance is determined to endanger the safety of the staff, inmates or visitors of any county or municipal detention facility.

A. The commissioner's action under this subsection shall expire within 90 days or upon compliance with the mandatory standard. [PL 1983, c. 581, §§10, 59 (NEW).]

B. After having taken action under this section, the commissioner shall send a written inspection report to the affected facility. [PL 1983, c. 581, §§10, 59 (NEW).]

C. The commissioner shall decide what long-term action to take with respect to the affected facility on the basis of county or municipality response to the inspection report and subsequent meetings. [PL 1983, c. 581, §§10, 59 (NEW).]

[PL 1983, c. 581, §§10, 59 (NEW).]

5. Variances. The commissioner shall establish written procedures to govern the submission and consideration of requests for variances from established departmental standards, including provisions for department consideration of appeals of decisions.

A. The commissioner may grant a variance only when he determines that the variance will not result in diminishing the safety, health or security of staff, inmates or visitors of a county or municipal detention facility. [PL 1983, c. 581, §§10, 59 (NEW).]

B. The commissioner may grant variances to counties and municipalities for periods of up to 2 years. [PL 1983, c. 581, §§10, 59 (NEW).]

C. County and municipal officials may request variances from mandatory department standards if:

(1) Efforts are underway to achieve compliance and continued failure to comply is only temporary; or

(2) The intent and spirit of the standards may be attained through other means. [PL 1983, c. 581, §§10, 59 (NEW).]

D. The officials applying for a variance have the burden of showing clear justification for the variance. [PL 1983, c. 581, §§10, 59 (NEW).]

[PL 1983, c. 581, §§10, 59 (NEW).]

6. Advisory review.

[PL 2023, c. 135, §2 (RP).]

7. Technical assistance. The commissioner may provide technical assistance to county and municipal detention facilities to facilitate compliance with standards.

[PL 1983, c. 581, §§10, 59 (NEW).]

8. Standards regarding attorney-client communications. The commissioner shall establish mandatory standards:

A. By January 1, 2024, for the protection of confidential attorney-client communications by each county and municipal detention facility. The standards must include, at a minimum:

- (1) Processes to protect and ensure confidentiality of attorney-client communications, including but not limited to requirements that each facility develop and maintain a registry of the names, telephone numbers and other contact information for attorneys who provide legal services to residents of the facility and that the attorneys' names, telephone numbers and other contact information on the registry are confidential, except that each facility must proactively and by request of the attorney or the attorney's client who is a resident of the facility confirm the registration of an attorney's name, telephone number and other contact information; and
- (2) Processes to be followed in the event that there is a breach of attorney-client confidentiality; and [PL 2023, c. 394, Pt. A, §13 (NEW).]

B. By January 1, 2024, requiring each county and municipal detention facility to designate space within the facility for attorney-client meetings and the exchange of case materials and to make that space available to residents of the facility and their attorneys on a timely basis. [PL 2023, c. 394, Pt. A, §13 (NEW).]

[PL 2023, c. 394, Pt. A, §13 (NEW).]

SECTION HISTORY

PL 1983, c. 581, §§10,59 (NEW). PL 2007, c. 102, §6 (AMD). PL 2013, c. 27, §§1, 2 (AMD). PL 2021, c. 171, §1 (AMD). PL 2023, c. 135, §2 (AMD). PL 2023, c. 394, Pt. A, §13 (AMD).

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STATUTE: 34-A MRSA §1208, sub-§8(A)(1)

AGENCY: Department of Corrections

CONTACT PERSON: Jenna Heald

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

REF 1 MDOC**STATUTE:** 34-A MRSA §1208, sub-§8(A)(1)**AGENCY:** Department of Corrections**CONTACT PERSON:** Jill O'Brien (jill.r.obrien@maine.gov); Jenna Heald (foaa.mdoc@maine.gov)**RETURN BY:** October 2, 2026**Statutory Language:**

8. Standards regarding attorney-client communications. The commissioner shall establish mandatory standards:

A. By January 1, 2024, for the protection of confidential attorney-client communications by each county and municipal detention facility. The standards must include, at a minimum:

- (1) Processes to protect and ensure confidentiality of attorney-client communications, including but not limited to requirements that each facility develop and maintain a registry of the names, telephone numbers and other contact information for attorneys who provide legal services to residents of the facility and that the attorneys' names, telephone numbers and other contact information on the registry are confidential, except that each facility must proactively and by request of the attorney or the attorney's client who is a resident of the facility confirm the registration of an attorney's name, telephone number and other contact information; and

MDOC Responses to RTKAC Questions:

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

MDOC does not have any direct experience in this regard as this statutory exception is about the MDOC's adoption of standards to govern how the jails operate.

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

MDOC wholeheartedly supports the continuation of this exception, which is necessary to maintain the confidentiality of attorney-client communications, as required by United States Supreme Court and Law Court precedent.

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

MDOC is not aware of any problems and believes the statute is sufficiently clear.

4. Does your agency recommend changes to this exception?

MDOC does not recommend changes to the exception.

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

Within MDOC, please contact Manager of Correctional Operations Steven French, steven.french@maine.gov. The Maine Sheriffs Association, County Corrections Professional Standards Council, Maine Prosecutors Association, and Maine Association of Criminal Defense Lawyers are also stakeholders the Committee may wish to consult.

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

N/A

Reference #2
34-A MRSA §1212

§1212. Confidential information

The following information pertaining to department employees and independent contractors is confidential and that part of any record of the department containing this information is not a public record, as defined in Title 1, section 402, subsection 3: [PL 1991, c. 281 (NEW).]

1. Addresses and telephone numbers. Nonbusiness addresses and telephone numbers; [PL 1991, c. 281 (NEW).]

2. Information regarding other persons. The existence, names, addresses and telephone numbers of family members, household members and persons to be notified in the event of an emergency; and [PL 1991, c. 281 (NEW).]

3. Work schedules. Information pertaining to work schedules. [PL 1991, c. 281 (NEW).]

SECTION HISTORY

PL 1991, c. 281 (NEW).

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STATUTE: 34-A MRSA §1212

AGENCY: Department of Corrections

CONTACT PERSON: Jenna Heald

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

REF 2 MDOC

STATUTE: 34-A MRSA §1212

AGENCY: Department of Corrections

CONTACT PERSON: Jill O'Brien (jill.r.obrien@maine.gov); Jenna Heald
(foaa.mdoc@maine.gov)

RETURN BY: October 2, 2026

Statutory language:

The following information pertaining to department employees and independent contractors is confidential and that part of any record of the department containing this information is not a public record, as defined in Title 1, section 402, subsection 3:

- 1. Addresses and telephone numbers.** Nonbusiness addresses and telephone numbers;
- 2. Information regarding other persons.** The existence, names, addresses and telephone numbers of family members, household members and persons to be notified in the event of an emergency; and
- 3. Work schedules.** Information pertaining to work schedules.

MDOC Responses to RTKAC Questions:

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

This exception protects MDOC employee and contractor (hereinafter both referred to as "staff") personal telephone numbers and home addresses, the existence, names, addresses, and phone numbers of family members, household members, and emergency contacts, as well as work schedules. MDOC relies on this exception to FOAA daily for requests from incarcerated residents and probationers, and MDOC estimates that it relies on this exception monthly for requests from members of the media and the public. It is a serious threat to the safety of staff and their families if residents have access to staff personal information, including contact information for their children and family members. Work schedules are important to keep confidential, as residents may plan escapes or assaults on other residents or staff, based on the work schedules of employees. Knowing when and how many people are reporting to work and who they are is information that cannot be provided to prison residents without creating safety risks. Also, knowing when someone is at work, and thus not at home, especially when combined with

knowledge of the person's home address, would create a risk to the safety of their family members and/or the security of their property, whether that risk is from associates of prison residents or probation clients. These exceptions are crucial to keeping staff and residents safe.

In addition, if this information were not confidential, MDOC would expect to receive many, many more inquiries daily about employee personal information.

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

MDOC vehemently supports the continuation of this exception. This exception is crucial for keeping staff and their families safe, maintaining secure facilities where residents are not aware of staff schedules and locations, and being able to recruit and retain staff. If MDOC staff's and family members' information were public, recruitment would be nearly impossible, as people would be unwilling to have that level of private information being available to prison residents, probationers, and the public.

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

MDOC is not aware of any problems and believes the statute is sufficiently clear.

4. Does your agency recommend changes to this exception?

MDOC strongly recommends that the exception remain unchanged.

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

At MDOC, Commissioner Anthony Cantillo, anthony.cantillo@maine.gov; DAFS HR Director for MDOC Aimee Norko, aimee.norko@maine.gov; AFSCME, MSEA, and MSLEA.

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

The Committee should be aware that personal information of prison officials has been used in very serious crimes. Tom Clements, then-chief of the Colorado Department of Corrections, was murdered in 2013 by a parolee who had obtained Clements' home address and rang his doorbell while impersonating a pizza delivery driver. *See* <https://www.cpr.org/show-segment/clements-murder-investigation-continues-as-do-his-prison-reforms/>.

Reference #3
34-A MRSA §1216, sub-§1

§1216. Confidentiality of information

1. **Limited disclosure.** All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any person receiving services from the department must be kept confidential and may not be disclosed by any person, except that public records must be disclosed in accordance with Title 1, section 408-A; criminal history record information may be disseminated in accordance with Title 16, chapter 7; and documents other than those documents pertaining to information obtained by the department for the purpose of evaluating a client's ability to participate in a community-based program or from informants in a correctional or detention facility for the purpose of determining whether facility rules have been violated or pertaining to a victim's request for notice of release may, and must upon request, be disclosed:

A. To any person if the person receiving services, that person's legal guardian, if any, and, if that person is a minor, that person's parent or legal guardian give informed written consent to the disclosure of the documents referred to in this subsection after being given the opportunity to review the documents sought to be disclosed; [PL 2013, c. 588, Pt. A, §44 (RPR).]

B. To any state agency if necessary to carry out the statutory functions of that agency; [PL 2013, c. 588, Pt. A, §44 (RPR).]

C. If ordered by a court of record, subject to any limitation in the Maine Rules of Evidence, Rule 503; [PL 2013, c. 588, Pt. A, §44 (RPR).]

D. To any criminal justice agency if necessary to carry out the administration of criminal justice as defined in Title 16, section 703, subsection 1, the administration of criminal justice as defined in Title 16, section 803, subsection 2 or the administration of juvenile justice as defined in Title 15, section 3003, subsection 1-A or for criminal justice agency employment; [PL 2021, c. 365, §35 (AMD); PL 2021, c. 365, §37 (AFF).]

E. To persons engaged in research if:

- (1) The research plan is first submitted to and approved by the commissioner;
- (2) The disclosure is approved by the commissioner; and
- (3) Neither original records nor identifying data are removed from the facility or office that prepared the records.

The commissioner and the person doing the research shall preserve the anonymity of the person receiving services from the department and may not disseminate data that refer to that person by name or number or in any other way that might lead to the person's identification; [PL 2013, c. 588, Pt. A, §44 (RPR).]

F. To persons who directly supervise or report on the health, behavior or progress of a juvenile, to the superintendent of a juvenile's school and the superintendent's designees and to agencies that are or might become responsible for the health or welfare of a juvenile if the information is relevant to and disseminated for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation, including reintegration into the school; or [PL 2013, c. 588, Pt. A, §44 (RPR).]

G. To any state agency engaged in statistical analysis for the purpose of improving the delivery of services to persons who are or might become mutual clients if:

- (1) The plan for the statistical analysis is first submitted to and approved by the commissioner; and
- (2) The disclosure is approved by the commissioner.

The commissioner and the state agency requesting the information shall preserve the anonymity of the persons receiving services from the department and may not disseminate data that refer to any

person by name or number or that in any other way might lead to a person's identification. [PL 2013, c. 588, Pt. A, §44 (RPR).]

Notwithstanding any other provision of law, the department may release the names, dates of birth and social security numbers of persons receiving services from the department and, if applicable, eligibility numbers and the dates on which those persons received services to any state or federal agency for the sole purpose of determining eligibility and billing for services and payments under federally funded programs administered by the agency. The department may also release to the agency information required for and to be used solely for audit or research purposes, consistent with federal law, for those services provided by or through the department. Agency personnel shall treat this information as confidential in accordance with federal and state law and shall return the records when their purpose has been served.

[PL 2021, c. 365, §35 (AMD); PL 2021, c. 365, §37 (AFF).]

2. Release of certain information to victims. Notwithstanding subsection 1, upon the request of a person who was the victim of a crime for which a client was incarcerated, as verified by the department or the prosecuting attorney, the department shall disclose the following information to the victim:

A. Whether the client has been charged with committing any crime while incarcerated and, if so, the crime with which the client has been charged; and [PL 2003, c. 205, §10 (NEW).]

B. Whether the client has been disciplined while incarcerated and, if so, the offense for which the disciplinary action was taken and the type of disciplinary action taken. [PL 2003, c. 205, §10 (NEW).]

[PL 2003, c. 205, §10 (NEW).]

3. Civil violation. A person who discloses information in violation of this section commits a civil violation for which a fine not to exceed \$1,000 may be adjudged.

[PL 2003, c. 205, §10 (NEW).]

4. Disclosure of confidential information. The disclosure of confidential information as provided by this section is also governed by Title 5, section 9057, subsection 6.

[PL 2003, c. 205, §10 (NEW).]

5. Disclosure of information. Nothing in this section permits or requires the disclosure of information to the extent it is designated confidential by another provision of law.

[PL 2003, c. 205, §10 (NEW).]

6. Assessment tools. Documents in the possession of the department used to screen or assess clients, including, but not limited to, questionnaires and test materials, are not public records for purposes of Title 1, chapter 13, subchapter 1. The department shall release these documents on request to any other state agency if necessary to carry out the statutory functions of that agency and to any committee or study commission established by the Legislature with authority to examine issues related to mental health.

[PL 2003, c. 205, §10 (NEW).]

SECTION HISTORY

PL 2003, c. 205, §10 (NEW). PL 2003, c. 689, §B6 (REV). PL 2005, c. 487, §§2-4 (AMD). PL 2011, c. 515, §2 (AMD). PL 2011, c. 662, §22 (AMD). PL 2013, c. 267, Pt. B, §27 (AMD). PL 2013, c. 424, Pt. B, §13 (AMD). PL 2013, c. 588, Pt. A, §44 (AMD). PL 2015, c. 470, §18 (AMD). PL 2017, c. 432, Pt. F, §2 (AMD). PL 2021, c. 365, §35 (AMD). PL 2021, c. 365, §37 (AFF).

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PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

STATUTE: 34-A MRSA §1216, sub-§1

AGENCY: Department of Corrections

CONTACT PERSON: Jenna Heald

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

MDOC REF 3**STATUTE:** 34-A MRSA §1216, sub-§1**AGENCY:** Department of Corrections**CONTACT PERSON:** Jill O'Brien (jill.r.obrien@maine.gov); Jenna Heald (foaa.mdoc@maine.gov)**RETURN BY:** October 2, 2026**Statutory Language:**

1. **Limited disclosure.** All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any person receiving services from the department must be kept confidential and may not be disclosed by any person, except that public records must be disclosed in accordance with Title 1, section 408-A; criminal history record information may be disseminated in accordance with Title 16, chapter 7; and documents other than those documents pertaining to information obtained by the department for the purpose of evaluating a client's ability to participate in a community-based program or from informants in a correctional or detention facility for the purpose of determining whether facility rules have been violated or pertaining to a victim's request for notice of release may, and must upon request, be disclosed:
 - A. To any person if the person receiving services, that person's legal guardian, if any, and, if that person is a minor, that person's parent or legal guardian give informed written consent to the disclosure of the documents referred to in this subsection after being given the opportunity to review the documents sought to be disclosed;
 - B. To any state agency if necessary to carry out the statutory functions of that agency;
 - C. If ordered by a court of record, subject to any limitation in the Maine Rules of Evidence, Rule 503;
 - D. To any criminal justice agency if necessary to carry out the administration of criminal justice as defined in Title 16, section 703, subsection 1, the administration of criminal justice as defined in Title 16, section 803, subsection 2 or the administration of juvenile justice as defined in Title 15, section 3003, subsection 1-A or for criminal justice agency employment;
 - E. To persons engaged in research if:
 - (1) The research plan is first submitted to and approved by the commissioner;
 - (2) The disclosure is approved by the commissioner; and
 - (3) Neither original records nor identifying data are removed from the facility or office that prepared the records.

The commissioner and the person doing the research shall preserve the anonymity of the person receiving services from the department and may not disseminate data that refer to that person by name or number or in any other way that might lead to the person's identification;

- F. To persons who directly supervise or report on the health, behavior or progress of a juvenile, to the superintendent of a juvenile's school and the superintendent's designees and to agencies that are or might become responsible for the health or welfare of a juvenile if the information is relevant to and disseminated for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation, including reintegration into the school; or
- G. To any state agency engaged in statistical analysis for the purpose of improving the delivery of services to persons who are or might become mutual clients if:
 - (1) The plan for the statistical analysis is first submitted to and approved by the commissioner; and
 - (2) The disclosure is approved by the commissioner.

The commissioner and the state agency requesting the information shall preserve the anonymity of the persons receiving services from the department and may not disseminate data that refer to any person by name or number or that in any other way might lead to a person's identification.

Notwithstanding any other provision of law, the department may release the names, dates of birth and social security numbers of persons receiving services from the department and, if applicable, eligibility numbers and the dates on which those persons received services to any state or federal agency for the sole purpose of determining eligibility and billing for services and payments under federally funded programs administered by the agency. The department may also release to the agency information required for and to be used solely for audit or research purposes, consistent with federal law, for those services provided by or through the department. Agency personnel shall treat this information as confidential in accordance with federal and state law and shall return the records when their purpose has been served.

MDOC Responses to RTKAC Questions:

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

MDOC relies on this exception many times per day. Prison resident and community corrections client (hereinafter "client") information beyond what is public criminal history record information (conviction, release date, and the like) should not be subject to FOAA. This exception is crucial to protect residents' and clients' safety and privacy. Medical, substance abuse treatment, problematic sexual behavior treatment, and mental health records must be confidential

to comply with federal and state law and to protect privacy. In addition, prison residents frequently have disputes with other residents and may seek to target, publicize, or harm residents convicted of certain crimes, like sex offenses, and thus even non-healthcare resident information (e.g., disciplinary reports, program enrollment, custody level) must be kept confidential from other residents and members of the public. There are also frequently family law and other disputes between clients and members of the public, in which members of the public seek records to bolster their positions. MDOC records should not be used for those purposes, absent a court order that complies with Maine and federal law.

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

MDOC vehemently supports the continuation of this exception, to protect resident and client safety and privacy and the privacy of their medical and mental health records.

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

MDOC is not aware of any problems and believes the statute is sufficiently clear.

4. Does your agency recommend changes to this exception?

MDOC recommends that this exception remain unchanged.

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

At MDOC, Commissioner Anthony Cantillo, anthony.cantillo@maine.gov.

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

N/A.

Reference #4
34-A MRSA §1216, sub-§6

§1216. Confidentiality of information

1. Limited disclosure. All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any person receiving services from the department must be kept confidential and may not be disclosed by any person, except that public records must be disclosed in accordance with Title 1, section 408-A; criminal history record information may be disseminated in accordance with Title 16, chapter 7; and documents other than those documents pertaining to information obtained by the department for the purpose of evaluating a client's ability to participate in a community-based program or from informants in a correctional or detention facility for the purpose of determining whether facility rules have been violated or pertaining to a victim's request for notice of release may, and must upon request, be disclosed:

A. To any person if the person receiving services, that person's legal guardian, if any, and, if that person is a minor, that person's parent or legal guardian give informed written consent to the disclosure of the documents referred to in this subsection after being given the opportunity to review the documents sought to be disclosed; [PL 2013, c. 588, Pt. A, §44 (RPR).]

B. To any state agency if necessary to carry out the statutory functions of that agency; [PL 2013, c. 588, Pt. A, §44 (RPR).]

C. If ordered by a court of record, subject to any limitation in the Maine Rules of Evidence, Rule 503; [PL 2013, c. 588, Pt. A, §44 (RPR).]

D. To any criminal justice agency if necessary to carry out the administration of criminal justice as defined in Title 16, section 703, subsection 1, the administration of criminal justice as defined in Title 16, section 803, subsection 2 or the administration of juvenile justice as defined in Title 15, section 3003, subsection 1-A or for criminal justice agency employment; [PL 2021, c. 365, §35 (AMD); PL 2021, c. 365, §37 (AFF).]

E. To persons engaged in research if:

- (1) The research plan is first submitted to and approved by the commissioner;
- (2) The disclosure is approved by the commissioner; and
- (3) Neither original records nor identifying data are removed from the facility or office that prepared the records.

The commissioner and the person doing the research shall preserve the anonymity of the person receiving services from the department and may not disseminate data that refer to that person by name or number or in any other way that might lead to the person's identification; [PL 2013, c. 588, Pt. A, §44 (RPR).]

F. To persons who directly supervise or report on the health, behavior or progress of a juvenile, to the superintendent of a juvenile's school and the superintendent's designees and to agencies that are or might become responsible for the health or welfare of a juvenile if the information is relevant to and disseminated for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation, including reintegration into the school; or [PL 2013, c. 588, Pt. A, §44 (RPR).]

G. To any state agency engaged in statistical analysis for the purpose of improving the delivery of services to persons who are or might become mutual clients if:

- (1) The plan for the statistical analysis is first submitted to and approved by the commissioner; and
- (2) The disclosure is approved by the commissioner.

The commissioner and the state agency requesting the information shall preserve the anonymity of the persons receiving services from the department and may not disseminate data that refer to any

person by name or number or that in any other way might lead to a person's identification. [PL 2013, c. 588, Pt. A, §44 (RPR).]

Notwithstanding any other provision of law, the department may release the names, dates of birth and social security numbers of persons receiving services from the department and, if applicable, eligibility numbers and the dates on which those persons received services to any state or federal agency for the sole purpose of determining eligibility and billing for services and payments under federally funded programs administered by the agency. The department may also release to the agency information required for and to be used solely for audit or research purposes, consistent with federal law, for those services provided by or through the department. Agency personnel shall treat this information as confidential in accordance with federal and state law and shall return the records when their purpose has been served.

[PL 2021, c. 365, §35 (AMD); PL 2021, c. 365, §37 (AFF).]

2. Release of certain information to victims. Notwithstanding subsection 1, upon the request of a person who was the victim of a crime for which a client was incarcerated, as verified by the department or the prosecuting attorney, the department shall disclose the following information to the victim:

A. Whether the client has been charged with committing any crime while incarcerated and, if so, the crime with which the client has been charged; and [PL 2003, c. 205, §10 (NEW).]

B. Whether the client has been disciplined while incarcerated and, if so, the offense for which the disciplinary action was taken and the type of disciplinary action taken. [PL 2003, c. 205, §10 (NEW).]

[PL 2003, c. 205, §10 (NEW).]

3. Civil violation. A person who discloses information in violation of this section commits a civil violation for which a fine not to exceed \$1,000 may be adjudged.

[PL 2003, c. 205, §10 (NEW).]

4. Disclosure of confidential information. The disclosure of confidential information as provided by this section is also governed by Title 5, section 9057, subsection 6.

[PL 2003, c. 205, §10 (NEW).]

5. Disclosure of information. Nothing in this section permits or requires the disclosure of information to the extent it is designated confidential by another provision of law.

[PL 2003, c. 205, §10 (NEW).]

6. Assessment tools. Documents in the possession of the department used to screen or assess clients, including, but not limited to, questionnaires and test materials, are not public records for purposes of Title 1, chapter 13, subchapter 1. The department shall release these documents on request to any other state agency if necessary to carry out the statutory functions of that agency and to any committee or study commission established by the Legislature with authority to examine issues related to mental health.

[PL 2003, c. 205, §10 (NEW).]

SECTION HISTORY

PL 2003, c. 205, §10 (NEW). PL 2003, c. 689, §B6 (REV). PL 2005, c. 487, §§2-4 (AMD). PL 2011, c. 515, §2 (AMD). PL 2011, c. 662, §22 (AMD). PL 2013, c. 267, Pt. B, §27 (AMD). PL 2013, c. 424, Pt. B, §13 (AMD). PL 2013, c. 588, Pt. A, §44 (AMD). PL 2015, c. 470, §18 (AMD). PL 2017, c. 432, Pt. F, §2 (AMD). PL 2021, c. 365, §35 (AMD). PL 2021, c. 365, §37 (AFF).

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STATUTE: 34-A MRSA §1216, sub-§6

AGENCY: Department of Corrections

CONTACT PERSON: Jenna Heald

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

MDOC REF 4**STATUTE:** 34-A MRSA §1216, sub-§6**AGENCY:** Department of Corrections**CONTACT PERSON:** Jill O'Brien (jill.robrien@maine.gov); Jenna Heald (foaa.mdoc@maine.gov)**RETURN BY:** October 2, 2026

6. **Assessment tools.** Documents in the possession of the department used to screen or assess clients, including, but not limited to, questionnaires and test materials, are not public records for purposes of Title 1, chapter 13, subchapter 1. The department shall release these documents on request to any other state agency if necessary to carry out the statutory functions of that agency and to any committee or study commission established by the Legislature with authority to examine issues related to mental health.

MDOC Responses to RTKAC Questions:

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

MDOC relies on this exception daily in the sense that it administers assessment tools on every resident and client under its jurisdiction. MDOC estimates that it receives requests for these materials on average weekly.

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

MDOC strongly supports the continuation of this exception, which is necessary to maintain the integrity of these assessments and because MDOC does not own these proprietary tools. They are copyrighted and proprietary, and the rights belong to the entities that created them. For example, MDOC uses the Texas Christian University Drug Screen II (TCUDS II) (owned and copyrighted by Texas Christian University), the Service Planning Instrument for Women (SPIn-W) (owned and copyrighted by Orbus Partners), and the Level of Service Inventory-Revised (LSI-R) (owned and copyrighted by Multi-Health Systems), among others.

MDOC does not have the right to release these tools. In addition, if residents, probation clients, and juveniles knew the contents and structure of the assessment tools, they could manipulate their responses, and the tools would no longer be of value.

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

MDOC is not aware of any problems and believes the statute is sufficiently clear.

4. Does your agency recommend changes to this exception?

MDOC recommends that the exception remain unchanged.

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

From MDOC, Director of Classification Chadwick Curtis (chadwick.curtis@maine.gov), as well as the companies and institutions that create, own, and license the assessment tools used, described above.

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

N/A

Reference #5

34-A MRSA §1402(14)(A)(1)

§1402. Duties

In addition to other duties set out in this Title, the commissioner has the following duties. [PL 1983, c. 459, §6 (NEW).]

1. General. The commissioner has general supervision, management and control of the research and planning, grounds, buildings, property, officers, employees and clients of any correctional facility, detention facility or correctional program. [PL 1991, c. 314, §17 (AMD).]

2. Enforcement of laws. The commissioner shall enforce all laws concerning correctional facilities, unless specific law enforcement duties are given by law to other persons. [PL 1983, c. 459, §6 (NEW).]

3. Rules. Rules shall be established as follows.

A. The commissioner shall establish, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, such rules as he determines appropriate or necessary for the care and management of the property of all correctional facilities, for the production and distribution of industrial products of the correctional facilities and for the execution of the statutory purposes and functions of correctional facilities or correctional programs. [PL 1983, c. 459, §6 (NEW).]

B. The central principle underlying all rules, regulations, procedures and practices relating to clients is that the clients retain all rights of an ordinary citizen, except those expressly or by necessary implication taken from them by law. [PL 1991, c. 314, §18 (AMD).]
[PL 1991, c. 314, §18 (AMD).]

4. Career and technical education. Establishment of career and technical education shall be as follows.

A. The commissioner shall establish and maintain suitable courses for career and technical education in the correctional facilities.

(1) The commissioner shall install equipment necessary to carry out this duty.

(2) The commissioner shall employ suitable and qualified instructors necessary to carry out this duty, subject to the approval of the Department of Education. [PL 2005, c. 683, Pt. B, §25 (AMD).]

B. The expenses of carrying out this subsection shall be paid from the appropriations for the correctional facilities. [PL 1983, c. 459, §6 (NEW).]
[PL 2005, c. 683, Pt. B, §25 (AMD).]

5. Grievance procedures. The commissioner shall establish procedures for hearing grievances of clients. The commissioner shall establish a separate grievance process for addressing complaints by prisoners about their medical and mental health treatment as well as a separate grievance process for addressing complaints regarding compliance with the standards established pursuant to sections 1208, 1208-A and 1208-B. The commissioner shall track data for all grievances filed by prisoners about their medical or mental health treatment and shall publish monthly on the department's publicly accessible website the data tracked pursuant to this subsection in a manner that does not violate the confidentiality requirements of section 1216 or any other provision of state or federal law. [PL 2023, c. 659, §1 (AMD).]

6. County jail, holding facility and short-term detention area standards.
[PL 1983, c. 581, §§11,59 (RP).]

7. Abuse allegations in correctional and detention facilities. The commissioner is responsible for ensuring appropriate intervention and remediation in cases of substantiated abuse and neglect in correctional and detention facilities. The commissioner shall ensure, through inspection at least every

2 years, that all correctional and detention facilities meet applicable federal and state standards relating to the health and safety of clients of these facilities.

[PL 1991, c. 314, §20 (AMD).]

8. Allegations of child abuse or neglect in correctional and detention facilities. The commissioner is responsible for the investigation of all reports of suspected child abuse or neglect in correctional and detention facilities.

A. These investigations must be conducted with the Department of Health and Human Services, as appropriate, and, in cases where there are allegations or indications of criminal conduct, with the Department of the Attorney General, as appropriate. [PL 1991, c. 314, §20 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

B. The commissioner shall negotiate joint working agreements with the Department of Health and Human Services and the Department of the Attorney General concerning procedures and respective responsibilities for conducting investigations of allegations of child abuse or neglect in correctional and detention facilities. [PL 1991, c. 314, §20 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

[PL 1991, c. 314, §20 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

9. Statement of correctional system impact. The commissioner shall prepare statements pertaining to the impact that proposed legislation has upon correctional system resources, including the cost that the correctional system would bear. The commissioner shall make inquiry of a statewide association of prosecuting attorneys, the judicial branch, a statewide association of county sheriffs and any other parties, as appropriate, in order to provide the most accurate estimates of the correctional system impact, including the number of additional probationers, the number of additional incarcerated individuals and the number of additional jail and prison beds that may reasonably be anticipated from enactment of the legislation, by fiscal year. Whenever practicable, the statements must also include the impact of such legislation in future biennia as well. For purposes of this subsection, the correctional system includes correctional facilities and services operated or funded by the State or by any county government. The statements must be furnished to the appropriate committee of the Legislature for the information of its members and to the legislative staff office designated to collect and assemble fiscal information for use of legislative committees under Title 3, section 163-A, subsection 10. The statements must be considered in the preparation of the fiscal note included in a committee amendment or other amendment if the legislation or amendment has a fiscal impact on the correctional system. A statement is not required for any legislation that has no impact upon the correctional system.

[PL 2007, c. 240, Pt. YYY, §2 (AMD).]

10. Rehabilitation programs. Within the limits of available resources, the commissioner shall establish and maintain programs, inside and outside of correctional facilities, that provide rehabilitation services and opportunities for clients.

[PL 1991, c. 355, §3 (NEW).]

10-A. Culturally informed treatment and recovery programs. The commissioner shall ensure that any residential or nonresidential treatment or recovery programs established by the commissioner and serving a juvenile who has been adjudicated of a juvenile crime and who has not attained 21 years of age provide for that juvenile culturally informed treatment plans and modalities and culturally informed community reintegration services and provide language services for that juvenile and the juvenile's family and support system.

[PL 2021, c. 339, §1 (NEW).]

10-B. Culturally informed prevention, diversion and restorative justice programs. The commissioner shall ensure that any prevention, diversion or restorative justice programs established by the commissioner and serving a juvenile who has been adjudicated of a juvenile crime and who has not attained 21 years of age provide for that juvenile culturally informed services, including, but not limited to, referrals to community based services and supports, housing, case management, education and

employment resources, and provide language services for that juvenile and the juvenile's family and support system, as necessary.
[PL 2021, c. 339, §2 (NEW).]

11. Report requirement. The commissioner shall report annually, no later than January 4th of each year, to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs regarding recidivism information including, but not limited to:

- A. The number of juvenile offenders in the correctional facilities and their reoffending rates; [PL 2003, c. 20, Pt. N, §1 (NEW).]
- B. The number of incarcerated adults who were adjudicated as having committed a juvenile offense; and [PL 2003, c. 20, Pt. N, §1 (NEW).]
- C. The recidivism rates of juvenile offenders as adults. [PL 2003, c. 20, Pt. N, §1 (NEW).]
[PL 2003, c. 20, Pt. N, §1 (NEW).]

12. County and regional jails. The commissioner shall receive, administer and distribute to the county and regional jails funding provided through the General Fund, Other Special Revenue Funds and any federal and grant funds in accordance with section 1210-E and Title 30-A, section 1659-A. The department shall make distributions as required by section 1210-E, subsection 5 to each jail on a quarterly basis and as may be adjusted pursuant to section 1208-B, subsection 1, paragraph B.
[PL 2021, c. 732, Pt. D, §4 (AMD); PL 2021, c. 732, Pt. D, §7 (AFF).]

13. Report on jails. Beginning October 1, 2023 and annually thereafter, the department, in collaboration with a statewide association of sheriffs and a statewide association of county commissioners, shall submit a report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters on the mandatory standards, policies and procedures for jails adopted pursuant to section 1208-B and the status of funding for the jails from the County Jail Operations Fund established in section 1210-E, subsection 2, county taxes and other sources. The department and representatives of the associations shall conduct a review of the funding provided to county and regional jails pursuant to subsection 12 and section 1210-E, subsection 5 and the distribution formula established pursuant to section 1210-E, subsection 9. If the department and the associations find that changes are needed to the distribution method or procedures or the level of General Fund support, the department shall report that finding to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters and shall recommend changes in the formula determined pursuant to section 1210-E, subsection 9 and the level of General Fund support. After reviewing the report, the joint standing committee is authorized to submit legislation to address issues raised by the report and to improve the funding and operation of the jails.
[PL 2021, c. 732, Pt. D, §5 (AMD); PL 2021, c. 732, Pt. D, §7 (AFF).]

14. Standards regarding attorney-client communications. The commissioner shall establish mandatory standards:

- A. By January 1, 2024, for the protection of confidential attorney-client communications by each correctional facility. The standards must include, at a minimum:

- ✓ (1) Processes to protect and ensure confidentiality of attorney-client communications, including but not limited to requirements that each correctional facility develop and maintain a registry of the names, telephone numbers and other contact information for attorneys who provide legal services to persons who are residents of the correctional facility and that the attorneys' names, telephone numbers and other contact information on the registry are confidential, except that each correctional facility must proactively and by request of the attorney or the attorney's client confirm the registration of an attorney's name, telephone number and other contact information; and

(2) Processes to be followed in the event that there is a breach of attorney-client confidentiality; and [PL 2023, c. 394, Pt. A, §14 (NEW).]

B. By January 1, 2024, requiring each correctional facility to designate space within the correctional facility for attorney-client meetings and the exchange of case materials and to make that space available to residents of the correctional facility and their attorneys on a timely basis. [PL 2023, c. 394, Pt. A, §14 (NEW).]

[PL 2023, c. 394, Pt. A, §14 (NEW).]

15. Report on segregated prisoners. On or before January 15, 2026 and annually thereafter, the commissioner shall submit a report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters that includes the following information for each correctional facility about prisoners who have been segregated and not allowed to leave their cells for a minimum of 22 hours out of a 24-hour period during the prior calendar year:

A. The total number of prisoners who were segregated; [PL 2025, c. 259, §3 (NEW).]

B. For each instance of segregation, the total amount of time a prisoner was segregated; and [PL 2025, c. 259, §3 (NEW).]

C. The reason why the prisoner was segregated. [PL 2025, c. 259, §3 (NEW).]

After reviewing the report, the joint standing committee of the Legislature having jurisdiction over criminal justice matters is authorized to submit legislation to address issues raised by the report.

[PL 2025, c. 259, §3 (NEW).]

REVISOR'S NOTE: (Subsection 15 as enacted by PL 2025, c. 485, §1 is REALLOCATED TO TITLE 34-A, SECTION 1402, SUBSECTION 16)

16. (REALLOCATED FROM T. 30-A, §1402, sub-§15) Reentry services. Within the limits of available resources, the commissioner shall establish and maintain a reentry services program for residents of correctional facilities that makes available, as appropriate, reentry services in the following areas:

A. Health and wellness, including, but not limited to, accessing available MaineCare and veterans' benefits and connecting with community providers and other resources for treating and managing substance use disorder and maintaining physical and mental health; [PL 2025, c. 485, §1 (NEW); RR 2025, c. 1, Pt. A, §46 (RAL).]

B. Financial literacy and planning, including, but not limited to, information about opening a bank account, managing a budget and building and maintaining credit; [PL 2025, c. 485, §1 (NEW); RR 2025, c. 1, Pt. A, §46 (RAL).]

C. Employment preparation, including, but not limited to, writing a resume, searching for employment, information about obtaining a driver's license, information about obtaining work-related certification or licensure and locating and securing housing; [PL 2025, c. 485, §1 (NEW); RR 2025, c. 1, Pt. A, §46 (RAL).]

D. Community and family integration, including, but not limited to, voter registration information, information about services offered through the statewide 2-1-1 telephone number designated pursuant to Title 35-A, section 7108 and connecting with community support programs, including programs offering education on conflict resolution, establishing and maintaining relationships and rejection management techniques; and [PL 2025, c. 485, §1 (NEW); RR 2025, c. 1, Pt. A, §46 (RAL).]

E. Technology training, including, but not limited to, information about computer literacy programs and avoiding Internet scams. [PL 2025, c. 485, §1 (NEW); RR 2025, c. 1, Pt. A, §46 (RAL).]

[PL 2025, c. 485, §1 (NEW); RR 2025, c. 1, Pt. A, §46 (RAL).]

SECTION HISTORY

PL 1983, c. 459, §6 (NEW). PL 1983, c. 581, §§11,59 (AMD). PL 1987, c. 744, §11 (AMD). PL 1989, c. 925, §17 (AMD). PL 1991, c. 314, §§17-20 (AMD). PL 1991, c. 355, §3 (AMD). PL 2001, c. 659, §11 (AMD). PL 2003, c. 20, §N1 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 397, §D3 (REV). PL 2005, c. 683, §B25 (AMD). PL 2007, c. 240, Pt. YYY, §2 (AMD). PL 2009, c. 1, Pt. S, §3 (AMD). PL 2015, c. 335, §24 (AMD). PL 2021, c. 339, §§1, 2 (AMD). PL 2021, c. 620, §4 (AMD). PL 2021, c. 732, Pt. D, §§4, 5 (AMD). PL 2021, c. 732, Pt. D, §7 (AFF). PL 2023, c. 394, Pt. A, §14 (AMD). PL 2023, c. 659, §1 (AMD). PL 2025, c. 259, §3 (AMD). PL 2025, c. 485, §1 (AMD). RR 2025, c. 1, Pt. A, §46 (COR).

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PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

STATUTE: 34-A MRSA §1402(14)(A)(1)

AGENCY: Department of Corrections

CONTACT PERSON: Jenna Heald

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

MDOC REF 5**STATUTE:** 34-A MRSA §1402(14)(A)(1)**AGENCY:** Department of Corrections**CONTACT PERSON:** Jill O'Brien (jill.robrien@maine.gov); Jenna Heald (foaa.mdoc@maine.gov)**RETURN BY:** October 2, 2026

14. Standards regarding attorney-client communications. The commissioner shall establish mandatory standards:

- A. By January 1, 2024, for the protection of confidential attorney-client communications by each correctional facility. The standards must include, at a minimum:
- (1) Processes to protect and ensure confidentiality of attorney-client communications, including but not limited to requirements that each correctional facility develop and maintain a registry of the names, telephone numbers and other contact information for attorneys who provide legal services to persons who are residents of the correctional facility and that the attorneys' names, telephone numbers and other contact information on the registry are confidential, except that each correctional facility must proactively and by request of the attorney or the attorney's client confirm the registration of an attorney's name, telephone number and other contact information; and

MDOC Responses to Clerk/RTKAC Questions:

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

MDOC estimates that it relies on this exception daily, to protect attorney-client communications between residents and their counsel. Telephone recordings are frequently requested by other attorneys, the Department of Health and Human Services, and litigants/family members involved in disputes over child custody or other issues, and it is important that attorney-client communications not be subject to FOAA.

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

MDOC wholeheartedly supports the continuation of this exception, which is necessary to maintain the confidentiality of attorney-client communications, as required by United States Supreme Court and Law Court precedent.

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

MDOC is not aware of any problems and believes the statute is sufficiently clear.

4. Does your agency recommend changes to this exception?

MDOC recommends that the exception remain unchanged.

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

Within MDOC, please contact Commissioner Anthony Cantillo, anthony.cantillo@maine.gov. The Maine Prosecutors Association and Maine Association of Criminal Defense Lawyers are also stakeholders the Committee may wish to consult.

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

N/A

Reference #6
34-A MRSA §5210, sub-§4

§5210. Duties

The board shall: [PL 1983, c. 459, §6 (NEW).]

1. Time of parole. Determine the time of parole for each committed offender; [PL 1983, c. 459, §6 (NEW).]

2. Parole revocation. Revoke parole when warranted due to a parole violation; [PL 1983, c. 459, §6 (NEW).]

3. Discharge from parole. Determine the time of discharge of parolees from parole supervision; and [PL 1983, c. 459, §6 (NEW).]

4. Advice to Governor. When requested by the Governor, advise him concerning applications for pardon, reprieve or commutation.

A. The board shall hold hearings, cause an investigation to be made and collect records to determine the facts and circumstances of a committed offender's crime, his past criminal record, his social history and his physical and mental condition as may bear on the application. [PL 1983, c. 459, §6 (NEW).]

B. The board shall make recommendations regarding action by the Governor on the application. [PL 1983, c. 459, §6 (NEW).]

C. All information obtained under this subsection, and any report furnished to the Governor under this subsection, is confidential. [PL 1983, c. 459, §6 (NEW).]
[PL 1983, c. 459, §6 (NEW).]

SECTION HISTORY

PL 1983, c. 459, §6 (NEW).

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STATUTE: 34-A MRSA §5210, sub-§4

AGENCY: Department of Corrections

CONTACT PERSON: Jenna Heald

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

MDOC REF 6**STATUTE:** 34-A MRSA §5210, sub-§4**AGENCY:** Department of Corrections**CONTACT PERSON:** Jill O'Brien (jill.r.obrien@maine.gov); Jenna Heald
(foaa.mdoc@maine.gov)**RETURN BY:** October 2, 2026**Statutory Language:**

4. Advice to Governor. When requested by the Governor, advise him concerning applications for pardon, reprieve or commutation.

A. The board shall hold hearings, cause an investigation to be made and collect records to determine the facts and circumstances of a committed offender's crime, his past criminal record, his social history and his physical and mental condition as may bear on the application.

B. The board shall make recommendations regarding action by the Governor on the application.

C. All information obtained under this subsection, and any report furnished to the Governor under this subsection, is confidential.

MDOC Responses to RTKAC Questions:

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

This exception applies to any report created for the Governor by the Parole Board and information obtained by MDOC to provide advice to the Governor regarding applications for pardon, reprieve, or commutation, which frequently includes the sentiments and statements of victims. Release of victim information, including their stance on pardon decisions, could put those victims in danger. MDOC estimates that it relies on this exception monthly. The information and report referred to in this statute also frequently include private information about the applicant for a pardon, reprieve, or commutation, including family and healthcare information. The fact that someone has applied for one of these should not be a reason to expose their personal information to the public. Finally, this statute protects those who make recommendations to the Governor (both MDOC staff and Parole Board members) from having their recommendations known. This protects the integrity of their recommendations and protects them from those who may do them harm due to disagreement with a particular recommendation.

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

MDOC strongly supports the continuation of this exception, so that the Governor receives honest, full information on whether someone is deserving of a pardon, reprieve, or commutation, without fear of public release. The information will frequently include information about the victim(s)' perspective, and release of that information to the person seeking a pardon, reprieve or commutation, or to the public could put those victims in danger.

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

On March 15, 2019, Governor Mills issued an Executive Order Establishing the Governor's Board on Executive Clemency, which governs the proceedings of that Board. But this statute only applies to the Parole Board. The Committee may seek to create a new statute to apply the same provision to cover the Board on Executive Clemency.

Otherwise, MDOC is not aware of any problems and believes the statute is sufficiently clear with respect to the Parole Board.

4. Does your agency recommend changes to this exception?

MDOC recommends that the exception remain unchanged.

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

Within MDOC, Commissioner Anthony Cantillo, Anthony.cantillo@maine.gov.

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

On March 15, 2019, Governor Mills issued an Executive Order Establishing the Governor's Board on Executive Clemency, which governs the proceedings of that Board and makes Board records confidential other than certain hearing, petition, and warrant information. This Executive Order may be relevant to the Committee's review.

Reference #7
34-A MRSA §9877, sub-§4

§9877. Activities of interstate commission-- Article 7

1. Commission actions. The interstate commission shall meet and take such actions as are consistent with the provisions of this compact. Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, the act must have been taken at a meeting of the interstate commission and must have received an affirmative vote of a majority of the members present.

[PL 2003, c. 495, §1 (NEW).]

2. Members' rights. Each member of the interstate commission has the right and power to cast a vote to which the compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and may not delegate a vote to another member state. A state council shall appoint another authorized representative in the absence of the commissioner from that state to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication is subject to the same quorum requirements of meetings when members are present in person.

[PL 2003, c. 495, §1 (NEW).]

3. Meeting. The interstate commission shall meet at least once during each calendar year. The chair of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

[PL 2003, c. 495, §1 (NEW).]

4. Information; records available. The interstate commission's bylaws must establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

[PL 2003, c. 495, §1 (NEW).]

5. Meeting notice. Public notice must be given of all meetings and all meetings are open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principles contained in the Government in the Sunshine Act, 5 United States Code, Section 552 (b), as amended. The interstate commission and any of its committees may close a meeting to the public when the interstate commission determines by 2/3 vote that an open meeting:

A. Relates solely to the interstate commission's internal personnel practices and procedures; [PL 2003, c. 495, §1 (NEW).]

B. May disclose matters specifically exempted from disclosure by statute; [PL 2003, c. 495, §1 (NEW).]

C. May disclose trade secrets or commercial or financial information that is privileged or confidential; [PL 2003, c. 495, §1 (NEW).]

D. May involve accusing a person of a crime or formally censuring a person; [PL 2003, c. 495, §1 (NEW).]

E. May disclose information of a personal nature and that disclosure would constitute a clearly unwarranted invasion of personal privacy; [PL 2003, c. 495, §1 (NEW).]

F. May disclose investigatory records compiled for law enforcement purposes; [PL 2003, c. 495, §1 (NEW).]

G. May disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity; [PL 2003, c. 495, §1 (NEW).]

H. May disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; or [PL 2003, c. 495, §1 (NEW).]

I. Specifically relates to the interstate commission's issuance of a subpoena or its participation in a civil action or proceeding. [PL 2003, c. 495, §1 (NEW).]
[PL 2003, c. 495, §1 (NEW).]

6. Public certification. For every meeting closed pursuant to subsection 5, the interstate commission's chief legal officer shall publicly certify that, in the chief legal officer's opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision of subsection 5. The interstate commission shall keep minutes that fully and clearly describe all matters discussed in any meeting and provide a full and accurate summary of any actions taken and the reasons for taking such actions, including a description of each of the views expressed on any item and the record of any vote by roll call, reflected in the vote of each member on the question. All documents considered in connection with any action must be identified in the minutes.
[PL 2003, c. 495, §1 (NEW).]

7. Collect data. The interstate commission shall collect data concerning the interstate movement of offenders as directed through its bylaws and rules that must specify the data to be collected, the means of collection and data exchange and reporting requirements.
[PL 2003, c. 495, §1 (NEW).]

SECTION HISTORY

PL 2003, c. 495, §1 (NEW).

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STATUTE: 34-A MRSA §9877, sub-§4

AGENCY: Department of Corrections

CONTACT PERSON: Jenna Heald

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

MDOC REF 7

STATUTE: 34-A MRSA § 9877, sub-§4

AGENCY: Department of Corrections

CONTACT PERSON: Jill O'Brien (jill.r.obrien@maine.gov); Jenna Heald (foaa.mdoc@maine.gov)

RETURN BY: October 2, 2026

Statutory language:

- 4. Information; records available.** The interstate commission's bylaws must establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

MDOC Response to RTKAC Questions:

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

MDOC estimates that it receives requests regarding individuals subject to the Interstate Compact for Adult Offender Supervision on a monthly basis, and this exception remains important.

Maine is a part of the Interstate Commission for Adult Offender Supervision (ICAOS). ICAOS has Bylaws and Rules. ICAOS Bylaws and Rules are adopted as Maine law at 34-A M.R.S.A. § 9884. *See also* 34-A M.R.S.A. § 9871 through §9888.

Bylaws for the Interstate Commission for Adult Offender Supervision are available at: <https://interstatecompact.org/bylaws>.

Article VI, Section 1 of the Bylaws cited above states in part, "All Commission meetings shall be open to the public, except as set forth in Commission Rules or as otherwise provided by the Compact. Prior public notice shall be provided in a manner consistent with the federal Government in Sunshine Act, 5 U.S.C. § 552b, including, but not limited to, the following: publication of notice of the meeting at least ten (10) days prior to the meeting in a nationally

distributed newspaper or an official newsletter regularly published by or on behalf of the Commission and distribution to interested parties who have requested in writing to receive such notices. A meeting may be closed to the public where the Commission determines by two-thirds (2/3rds) vote of its Members that there exists at least one of the conditions for closing a meeting, as provided by the Compact or Commission Rules.”

Rules for the Interstate Commission for Adult Offender Supervision are available at:
<https://interstatecompact.org/icaos-rules>.

ICAOS Rule 3.108 expressly states that victims’ comments made to states regarding transfer of clients are confidential and may not be disclosed to the public. This is crucial to protect victim safety, and this exception to FOAA should continue.

While information regarding individuals receiving services from MDOC is confidential under 34-A M.R.S.A. § 1216, the Interstate Compact’s provision regarding the confidentiality of victim sentiment remains important to the extent any such records fall outside of § 1216.

The Committee should take care to understand the Rules of the Commission, which are adopted as Maine law in 34-A M.R.S.A. § 9884. Because of its multi-state nature, it is not possible for the state of Maine, acting unilaterally, to change the above statutory provision or the Bylaws or Rules of ICAOS.

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

MDOC supports continuation of this exception. Because of its multi-state nature, it is not possible for the state of Maine, acting unilaterally, to change the above statutory provision or the Bylaws or Rules of ICAOS.

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

There have been no known problems arising from the exemption from public access to records related to the administration of ICAOS. Confidentiality regarding disclosure of records created or maintained by MDOC is clearly stated in 34-A M.R.S.A. §1216.

4. Does your agency recommend changes to this exception?

MDOC recommends that the provision remain unchanged.

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

Within MDOC, Adam Silberman (adam.silberman@maine.gov) is Maine’s designated Commissioner to the Interstate Commission for Adult Offender Supervision.

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

N/A

Reference #8
34-A MRSA §9903, sub-§8

§9903. Interstate Commission for Juveniles -- Article 3

1. Commission created. The compacting states hereby create the Interstate Commission for Juveniles. The commission is a body corporate and joint agency of the compacting states. The commission has all the responsibilities, powers and duties set forth in this section, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

[PL 2003, c. 500, §1 (NEW).]

2. Commissioners. The interstate commission consists of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the state council. The commissioner is the compact administrator, deputy compact administrator or designee from that state who serves on the interstate commission in such capacity under or pursuant to the applicable law of the compacting state.

[PL 2003, c. 500, §1 (NEW).]

3. Noncommissioner members. In addition to the commissioners who are the voting representatives of each state, the interstate commission includes individuals who are not commissioners but who are members of interested organizations. Those noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general; members of the Interstate Compact for Adult Offender Supervision and Interstate Compact for the Placement of Children; juvenile justice and juvenile corrections officials; and crime victims. All noncommissioner members of the interstate commission are ex officio, nonvoting members. The interstate commission may provide in its bylaws for such additional ex officio, nonvoting members, including members of other national organizations, as it considers necessary.

[PL 2003, c. 500, §1 (NEW).]

4. Each state entitled to one vote; quorum. Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states constitutes a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

[PL 2003, c. 500, §1 (NEW).]

5. Meetings. The interstate commission shall meet at least once each calendar year. The chair may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice must be given of all meetings and meetings are open to the public.

[PL 2003, c. 500, §1 (NEW).]

6. Executive committee. The interstate commission shall establish an executive committee that includes commission officers, members and others as determined by the bylaws. The executive committee has power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking or amendments to the compact. The executive committee oversees the day-to-day activities of the administration of the compact managed by the executive director and interstate commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and rules; and performs other duties as directed by the interstate commission or as set forth in the bylaws.

[PL 2003, c. 500, §1 (NEW).]

7. Member participation. Each commissioner of the interstate commission has the right and power to cast a vote to which the commissioner's state is entitled and to participate in the business and affairs of the interstate commission. A commissioner must vote in person and may not delegate a vote to another compacting state, except a commissioner, in consultation with the state council, may appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members'

participation in meetings by telephone or other means of telecommunication or electronic communication.

[PL 2003, c. 500, §1 (NEW).]

8. Public access to interstate commission records and information. The interstate commission's bylaws must establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

[PL 2003, c. 500, §1 (NEW).]

9. Public notice. Public notice of all meetings must be given and all meetings are open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and any of its committees may close a meeting to the public where it determines by 2/3 vote that an open meeting would be likely to:

A. Relate solely to the interstate commission's internal personnel practices and procedures; [PL 2003, c. 500, §1 (NEW).]

B. Disclose matters specifically exempted from disclosure by statute; [PL 2003, c. 500, §1 (NEW).]

C. Disclose trade secrets or commercial or financial information that is privileged or confidential; [PL 2003, c. 500, §1 (NEW).]

D. Involve accusing a person of a crime, or formally censuring a person; [PL 2003, c. 500, §1 (NEW).]

E. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy; [PL 2003, c. 500, §1 (NEW).]

F. Disclose investigative records compiled for law enforcement purposes; [PL 2003, c. 500, §1 (NEW).]

G. Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity; [PL 2003, c. 500, §1 (NEW).]

H. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or [PL 2003, c. 500, §1 (NEW).]

I. Specifically relate to the interstate commission's issuance of a subpoena or its participation in a civil action or other legal proceeding. [PL 2003, c. 500, §1 (NEW).]

[PL 2003, c. 500, §1 (NEW).]

10. Process for closed meetings. For every meeting closed pursuant to subsection 9, the interstate commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes that fully and clearly describe all matters discussed in any meeting and provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote. All documents considered in connection with any action must be identified in such minutes.

[PL 2003, c. 500, §1 (NEW).]

11. Data collection; records. The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed through rules specifying the data to be collected, the means of collection and data exchange and the reporting requirements. These methods of data collection, exchange and reporting must, insofar as is reasonably possible, conform to up-to-

date technology and coordinate the interstate commission's information functions with the appropriate repository of records.

[RR 2003, c. 1, §36 (COR).]

SECTION HISTORY

RR 2003, c. 1, §36 (COR). PL 2003, c. 500, §1 (NEW).

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STATUTE: 34-A MRSA §9903, sub-§8

AGENCY: Department of Corrections

CONTACT PERSON: Jenna Heald

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

REF 8 MDOC**STATUTE:** 34-A MRSA §9903, sub-§8**AGENCY:** Department of Corrections**CONTACT PERSON:** Jill O'Brien (jill.r.obrien@maine.gov); Jenna Heald
(foaa.mdoc@maine.gov)**RETURN BY:** October 2, 2026**Statutory Language:**

- 8. Public access to interstate commission records and information.** The interstate commission's bylaws must establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

MDOC Response to RTKAC Questions:

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

Bylaws for the Interstate Commission for Juveniles are available at:

https://www.juvenilecompact.org/search/content?keys=&type%5Bby_laws%5D=by_laws and are adopted as Maine law at 34-A M.R.S.A. §9901 through §9909.

Article V, Section 1 of the Bylaws cited above states in part, "All Commission meetings shall be open to the public, except as set forth in Commission Rules or as otherwise provided by the Compact. Prior public notice shall be provided in a manner consistent with the federal Government in Sunshine Act, 5 U.S.C. § 552b, including, but not limited to, the following: publication of notice of the meeting at least ten (10) days prior to the meeting in a nationally distributed newspaper or an official newsletter regularly published by or on behalf of the Commission and distribution to interested parties who have requested in writing to receive such notices. A meeting may be closed to the public where the Commission determines by two-thirds (2/3rds) vote of its Members that there exists at least one of the conditions for closing a meeting, as provided by the Compact or Commission Rules."

The Maine State Council for the Interstate Compact for Juveniles has adopted bylaws which are attached. Article VII of the Maine Council's bylaws states, "All information concerning juveniles shall be maintained in a confidential manner pursuant to the laws of the State of Maine."

It is important to note, however, that the “Interstate Commission” is a multi-state organization governing the nation-wide administration of the Interstate Compact for Juveniles, whereas the “Maine State Council” maintains information specific to cases involving application of the Interstate Compact for Juveniles in Maine.

There have been no known requests for production of records related to either the Interstate Commission for Juveniles or the Maine State Council for Interstate Compact for Juveniles, likely because these records would be confidential under the provision making MDOC client information confidential (34-A M.R.S.A. § 1216) and the provision making juvenile intelligence and investigative record information confidential (15 M.R.S.A. § 3308-A).

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

MDOC supports continuation of this exception. Because of its multi-state nature, it is not possible for the state of Maine, acting unilaterally, to change the above statutory provision or the commission’s Bylaws.

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

There have been no known problems arising from the exemption from public access to records related to the administration of the Interstate Compact for Juveniles. Confidentiality regarding disclosure of records created or maintained by MDOC is clearly stated in 34-A M.R.S.A. §1216.

4. Does your agency recommend changes to this exception?

No, MDOC is not recommending any changes to the existing exception.

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

Roy Curtis (Roy.A.Curtis@maine.gov) is Maine’s designated Commissioner to the Interstate Commission on Juveniles. Christine Thibeault (Christine.Thibeault@maine.gov) is the designated Administrator of the Interstate Compact for Juveniles within Maine.

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

N/A

Maine State Council for Interstate Compact for Juveniles By-Laws

Article I – Name and Location

The name of this organization shall be the Maine State Council for Interstate Compact for Juveniles. Hereafter referred to as the "Council". The Council's principal office and address is the Maine Department of Corrections, Office of Interstate Compact for Juveniles, Central Office, 25 Tyson Drive 3rd Floor, State House Station 111, Augusta, Me. 04333-011.

Article II – Legal Authority

The authority for establishing the Council is derived from the Interstate Compact for Juveniles, Maine Revised Statute Title 34-A: Corrections, Chapter 9: Subchapter 8: §9922.

Article III – Purpose

The Council has been created pursuant to Article IX of the Interstate Compact for Juveniles (ICJ) in recognition of the responsibility of each state for the proper supervision and or return of juveniles, delinquents, and status offenders who are on probation or parole and for juveniles who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety or the safety of others. The Compacting States also recognize that each state is responsible for the safe return of juveniles who have run away from home and in so doing have left their state of residence. The Compacting States also recognize that Congress by enacting the Crime Control Act, 4 U.S.C. section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

Article IV – Function

The Council shall have the following powers and duties:

- A. To advise the Maine Interstate Compact for Juveniles Commissioner and exercise oversight and advocacy concerning Maine's participation in Interstate Commission on Juveniles activities and discharge and other duties as may be determined by the State of Maine including, but not limited to, development of policy concerning operations and procedures regarding State of Maine's participation in the Interstate Compact for Juveniles.
- B. To provide training, education, guidance, support, and liaison activities regarding the implementation of the Compact within Maine to system stakeholders and interested parties.
- C. To review, submit comments on proposed ICJ Rule changes and any other voting matters to the Maine ICJ Commissioner and/or Maine ICJ Office for Eastern Regional meetings and the annual Business Meeting of the Interstate Commission for Juveniles.

D. To provide recommendations to the Maine General Assembly or various agency heads regarding possible revisions or new proposals to promote consistency of Maine Law with the ICJ Compact.

E. To provide consultation between ICJ Compact Administrators office and other states over the administration of the compact and the rules for Interstate Juvenile supervision within the structure of the Interstate Commission on Juveniles.

Article V – Membership

A. The Maine Interstate Compact for Juveniles Commissioner shall be appointed by the Commissioner of the Department of Corrections. The Maine Interstate Compact Commissioner for Juvenile Services shall serve at the pleasure of the Commissioner of the Maine Department of Corrections.

B. Members of the State Council are appointed by the Commissioner of the Department of Corrections with the exception of Legislative and Judicial appointees. The membership and or attendees of the Council shall include at least one representative from the following:

1. Maine State legislature appointee (s)
2. Judicial Branch appointee
3. Victim's Rights appointee
4. Law Enforcement appointee
5. Associate Commissioner of Juvenile Services
6. Compact Administrator and or Deputy Compact Administrator
7. Prosecutor appointee
8. Defense Attorney appointee
9. Department of Health and Human Services appointee

Members representing the Legislature, DHHS, and the Judiciary are appointed by the appropriate authority of their respective governmental branch or agency.

Members shall serve a four year term. Terms of membership shall be on a rotating basis. Members may be reappointed. Exiting members will receive notification from the Maine ICJ Commissioner three months prior to their term expiring. Members may be removed at the discretion of the Commissioner of Corrections.

C. Any additional members not mandated statutorily will be approved upon majority vote of the Council.

D. Non-voting members shall serve at the discretion of the Maine State ICJ Commissioner.

E. Members shall serve without compensation and any costs associated will be the responsibility of the individual member or agency.

Article VI – Quorum and Meetings

A. No action shall be taken by the Council unless a quorum of 5 voting Council members or their designees are present. All actions will take a simple majority vote. Any voting member may appoint a designee to attend and or vote on their behalf. Each of the members identified in V – B (Membership) will have one vote.

b. The Council shall meet on a quarterly basis, or as otherwise called for by the Commissioner of the ICJ.

C. Agenda, minutes, and notice of scheduled meetings shall be made available to the public pursuant to the Freedom of Information Act.

Article VII – Confidentiality

All information concerning juveniles shall be maintained in a confidential manner pursuant to the laws of the state of Maine.

Article VIII – Amendments of By-Laws

The By-Laws may be amended at any regular meeting by an affirmative vote of three quarters of the voting members present, provided that notice of such meeting shall include notice of the proposed amendments (s).

Adopted on the 29th day of April, 2016

Maine State ICJ Commissioner Name:

David M. Barrett

Maine State ICJ Commissioner Signature

David M. Barrett

Reference #9

34-A MRSA §11221, sub-§9-A

§11221. Maintenance of sex offender registry

1. Maintenance of registry. The bureau shall establish and maintain a registry of persons required to register pursuant to this subchapter. The registry must include the following information on each registrant:

- A. The registrant's name, aliases, date of birth, sex, race, height, weight, eye color, mailing address and physical location of expected domicile and residence; [PL 2005, c. 423, §9 (AMD).]
- B. Place of employment and college or school being attended, if applicable, and the corresponding address and location; [PL 2003, c. 371, §4 (AMD).]
- C. Offense history; [PL 1999, c. 437, §2 (NEW).]
- D. Notation of any treatment received for a mental abnormality or personality disorder; [PL 1999, c. 437, §2 (NEW).]
- E. A photograph and set of fingerprints; [PL 1999, c. 437, §2 (NEW).]
- F. A description of the offense for which the registrant was convicted, the date of conviction and the sentence imposed; and [PL 2003, c. 711, Pt. C, §17 (AMD); PL 2003, c. 711, Pt. D, §2 (AFF).]
- G. Any other information the bureau determines important. [PL 1999, c. 437, §2 (NEW).]
[PL 2005, c. 423, §9 (AMD).]

2. National or regional registry. The bureau is authorized to make the registry available to and accept files from a national or regional registry of registrants for the purpose of sharing information. [PL 2003, c. 711, Pt. C, §18 (AMD); PL 2003, c. 711, Pt. D, §2 (AFF).]

3. Registration form. The bureau shall develop a standardized registration form to be made available to the appropriate reporting authorities and persons required to register. [PL 1999, c. 437, §2 (NEW).]

4. Verification form. The bureau shall develop and mail a nonforwardable verification form to the last reported mailing address of each person required to meet the verification requirements of this chapter.

[PL 1999, c. 437, §2 (NEW).]

5. Sexually violent predator directory.
[PL 2003, c. 371, §5 (RP).]

6. Distribution of information to department and law enforcement agencies. The bureau shall distribute information described in subsection 1 to the department and law enforcement agencies having jurisdiction over the address and location of the registrant's domicile, residence, place of employment and college or school being attended.
[PL 2005, c. 423, §10 (AMD).]

7. Rules.
[PL 2005, c. 423, §11 (RP).]

8. Criminal justice agency access to information. The bureau shall provide access to the information described in subsection 1 to criminal justice agencies. For purposes of this subsection, "criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4.
[PL 2013, c. 267, Pt. B, §28 (AMD).]

9. Public access to information. The bureau shall provide information to the public as follows.

- A. The bureau shall post on the Internet for public inspection the following information concerning a registrant:

- (1) The registrant's name, date of birth and photograph;
- (2) The registrant's city or town of domicile and residence;
- (3) The registrant's place of employment and college or school being attended, if applicable, and the corresponding address and location;
- (4) The statutory citation and name of the offense for which the registrant was convicted; and
- (5) The registrant's designation as a 10-year registrant or a lifetime registrant. [PL 2011, c. 307, §1 (AMD).]

B. Upon receiving a written request that includes the name and date of birth of a registrant, the bureau shall provide the following information concerning a registrant to the requestor:

- (1) The registrant's name, aliases, date of birth, sex, race, height, weight, eye color, mailing address and physical location of domicile and residence;
- (2) The registrant's place of employment and college or school being attended, if applicable, and the corresponding address and location;
- (3) A description of the offense for which the registrant was convicted, the date of conviction and the sentence imposed; and
- (4) The registrant's photograph. [PL 2005, c. 423, §12 (AMD).]

[PL 2011, c. 307, §1 (AMD).]

9-A. Registry information. Registry information created, collected or maintained by the bureau, including, but not limited to, information relating to the identity of persons accessing the registry, is confidential, except the following are public records:

A. Information provided to the public pursuant to subsection 9; and [PL 2011, c. 299, §1 (NEW).]

B. Applications and bureau decisions, including any documents made part of those decisions, pursuant to section 11202-A. [PL 2011, c. 299, §1 (NEW).]

[PL 2011, c. 299, §1 (NEW).]

10. Registrant access to information. The bureau shall provide all information described in subsection 1, paragraphs A to F to a registrant who requests that person's own information. The process for access and review of that information is governed by Title 16, section 709. [PL 2013, c. 267, Pt. B, §29 (AMD).]

11. Maintenance by bureau. Only the bureau is authorized to maintain a sex offender registry on the Internet for purposes of public access as described in subsection 9. [PL 2005, c. 545, §1 (AMD).]

12. Law enforcement agency website. A law enforcement agency may maintain its own sex offender website and may make that information available for use by the public if:

A. A notice is prominently posted on the website that expressly states that the website is not the official state sex offender registry under subsection 1 and that the law enforcement agency posting the website is solely responsible for the website's content; [PL 2005, c. 545, §2 (NEW).]

B. The website provides a link to the bureau's Internet sex offender registry under subsection 1; [PL 2005, c. 545, §2 (NEW).]

C. The website contains information regarding only registrants who are domiciled, reside, attend college or school or work within the posting law enforcement agency's jurisdiction; and [PL 2005, c. 545, §2 (NEW).]

D. The information on the website is updated by the law enforcement agency as frequently as available resources permit, but no less than every 7 days. The law enforcement agency shall also prominently post on the website the date and time of the most recent update to the website. [PL 2005, c. 545, §2 (NEW).]

[PL 2005, c. 545, §2 (NEW).]

13. Access to registrant information existing in electronic form restricted. Notwithstanding Title 1, chapter 13:

A. The bureau may not disseminate in electronic form information about a registrant that is created, collected or maintained in electronic form by or for the bureau, except as made available to the public through the bureau's Internet website pursuant to subsection 9 and made available to the Background Check Center established pursuant to Title 22, chapter 1691; and [PL 2015, c. 299, §26 (AMD).]

B. Except as made available to the public through an Internet website maintained by a law enforcement agency pursuant to subsection 12, a law enforcement agency may not disseminate in electronic form information about a registrant that is collected or maintained in electronic form by or for the law enforcement agency. [PL 2011, c. 299, §3 (NEW).]

[PL 2015, c. 299, §26 (AMD).]

SECTION HISTORY

PL 1999, c. 437, §2 (NEW). PL 2003, c. 371, §§4-7 (AMD). PL 2003, c. 711, §§C17-20 (AMD). PL 2003, c. 711, §D2 (AFF). PL 2005, c. 423, §§9-13 (AMD). PL 2005, c. 545, §§1,2 (AMD). PL 2011, c. 299, §§1-3 (AMD). PL 2011, c. 307, §1 (AMD). PL 2013, c. 267, Pt. B, §§28, 29 (AMD). PL 2015, c. 299, §26 (AMD).

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STATUTE: 34-A MRSA §11221, sub-§9-A

AGENCY: State Bureau of Identification, Department of Public Safety

CONTACT PERSON: Rebecca Graham

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY
MAINE STATE POLICE
OFFICE OF THE DIRECTOR OF POLICY

To: Sen. Anne Carney, Members of the Right to Know Advisory Committee
Fr: Rebecca J. Graham, Director of Policy, FOAA & Legislative Affairs
Re: Right to Know Advisory Committee Department Questionnaire
Date: October 6, 2026

Please accept this combined response for our agency to review and report back the application of public records exceptions in the following sections of law: 34-A MRSA §11221, sub-§9-A, 34-A MRSA §11221, sub-§13, 34-A MRSA §11281, sub-§9, 34-A MRSA §11281, sub-§12, 34-B MRSA §3864, sub-§12.

The Department recommends retaining the existing exceptions contained in 34-A M.R.S. §11221(9-A) and (13), 34-A M.R.S. §11281(9) and (12), and 34-B M.R.S. §3864(12). Although these provisions address different records and operate in somewhat different ways, each reflects an important legislative determination that transparency in government must be balanced against privacy, public safety, the integrity of sensitive information systems, and the consequences of unrestricted dissemination of personally identifiable information.

The exceptions contained in 34-A M.R.S. §§11221 and 11281 relate to information maintained as part of Maine's sex offender registry. Sections 11221(9-A) and 11281(9) establish the basic confidentiality of registry information created, collected, or maintained by the State Bureau of Identification while expressly preserving public access to the categories of information the Legislature has determined should be publicly available. Sections 11221(13) and 11281(12) serve a related but distinct purpose by restricting the electronic dissemination of registrant information outside the specifically authorized means of public access. Thus, these statutes do not remove sex offender information from public scrutiny. Rather, they establish the manner and extent to which sensitive information may be publicly disseminated.

That distinction has become increasingly important as the nature of public records requests has changed. The Department has experienced an approximately 500 percent increase in targeted requests seeking information about particular individuals appearing in public safety records. These requests are materially

different from traditional requests seeking to provide transparency into government policy, expenditure, investigation practice, or other governmental activity. Maine's Freedom of Access Act expressly identifies openness in the conduct of the people's business and public inspection of the records of governmental actions as its central purposes. The State's own FOAA guidance similarly describes the law as providing broad access to government records while protecting legitimate governmental interests and individual privacy.

Increasingly, however, public records laws are also being used to aggregate information about individual citizens across multiple government databases. Artificial intelligence has significantly reduced the effort necessary to formulate large numbers of highly particularized requests and identify potentially responsive data fields. The corresponding work has not been reduced for the agency receiving those requests. A request generated or refined in seconds may require multiple days of employee time to review to locate responsive records, determine which statutory confidentiality provisions apply, identify information concerning third parties, perform required redactions, and conduct the legal review necessary to ensure that protected information is not inadvertently disclosed. This is placing a significant burden on all agencies and costing hundreds of hours of staff time to address.

The Department is also receiving requests whose apparent purpose is large-scale data acquisition rather than examination of governmental conduct. Public safety information has commercial value, and audio and visual material in law enforcement records can be collected, combined with information from other sources, repackaged, and sold or commercialized through a platform where sensational content increases content revenue. Once information is released electronically, the practical ability of the State to control subsequent aggregation, redistribution, or misuse disappears.

The electronic-distribution restrictions in §§11221(13) and 11281(12) are particularly significant in that environment. They allow the agency to determine affirmatively what registry information should be broadly available electronically rather than permitting the entirety of an underlying government database to become a source for unrestricted secondary data mining.

The Department does not view these developments as a reason to diminish meaningful public access to information about government. They do, however, reinforce the continuing need for carefully drawn statutory exceptions that distinguish between transparency concerning governmental conduct and unrestricted dissemination of sensitive information about identifiable individuals. Removal of these exceptions would not simply increase the public's ability to evaluate agency operations; or improve safety, it could materially alter the amount, format, and scalability of personal information available for aggregation.

Section 3864(12) presents a somewhat different issue. That statute requires a court issuing an involuntary commitment order to transmit an abstract of the order to the State Bureau of Identification. The statute requires identifying information concerning the individual, as well as the court's ruling and the required notification concerning firearms restrictions. The abstract is expressly confidential and is not a public record, although SBI may provide it to criminal justice agencies for legitimate law-enforcement purposes, the FBI's National Instant Criminal Background Check System, and concealed-firearm permit issuing authorities for the statutorily specified purposes.

The confidentiality exception in §3864(12) remains important. An involuntary commitment record involves extraordinarily sensitive personal information. Its legitimate use is narrowly defined: principally to ensure that legally operative firearms prohibitions can be identified and enforced. Making these abstracts generally available under FOAA would expose sensitive information about individuals without materially advancing public understanding of how government performs its functions.

There is, however, a legitimate operational concern with the identifying information accompanying these records that should be addressed independently of the public records exception. Section 3864(12) currently requires the abstract to include the person's name, date of birth, and gender. In practical application, the available identifying information has not always been sufficient to distinguish conclusively between individuals with the same or similar names and dates of birth, particularly when a person is attempting to purchase a firearm outside Maine. This can result in an individual who is not the subject of the Maine commitment order being initially flagged as potentially prohibited and having to undertake additional steps so that identity can be verified before the transaction proceeds. While infrequent, the agency has been notified of such issues on enough occasions to be concerning.

That is an important problem, but it is fundamentally a record-identification problem rather than a public-access problem. Eliminating or weakening the confidentiality exception would not resolve it. A more direct solution would be to improve the identifying information transmitted by the court so SBI and the relevant federal system have an additional reliable identifier with which to distinguish individuals. The objective should be to improve identity matching while continuing to limit collection and disclosure to information reasonably necessary for the statutory purpose.

This approach separates two issues that should not be conflated. The first is whether confidential involuntary-commitment information should become publicly available. The Department believes the existing exception remains necessary and

appropriately protects highly sensitive information. The second is whether the information supplied through the confidential governmental process is sufficiently precise to avoid erroneous identity matches. That issue deserves attention, but the appropriate response is to improve the quality of the identifying information transmitted rather than remove the confidentiality protection surrounding the record.

More broadly, these exceptions illustrate why periodic review of public records exceptions should consider not only whether the original justification for confidentiality continues to exist, but also how modern technology has changed the consequences of disclosure. The practical difference between allowing a member of the public to inspect an identified government record and supplying large quantities of information capable of instantaneous aggregation, profiling, redistribution, and commercial resale is substantial.

The Department strongly supports transparency concerning its operations, decisions, policies, and exercise of governmental authority. At the same time, transparency should not inadvertently convert public safety information systems into repositories from which comprehensive dossiers about individual citizens can be assembled. The significant increase in individualized requests, the ability of artificial intelligence to generate highly targeted requests, and the growing commercial interest in acquiring and repackaging government data make carefully tailored confidentiality and electronic-dissemination exceptions more important today, not less. The staffing burden these requests place on all public agencies should be examined in greater detail as well.

For these reasons, the Department recommends maintaining the exceptions in 34-A M.R.S. §11221(9-A) and (13), 34-A M.R.S. §11281(9) and (12), and 34-B M.R.S. §3864(12), while separately working with the Judicial Branch and other appropriate partners to improve the identifying information associated with §3864(12) transmissions and reduce the potential for erroneous identity matches.

Reference #10

34-A MRSA §11221, sub-§13

§11221. Maintenance of sex offender registry

1. Maintenance of registry. The bureau shall establish and maintain a registry of persons required to register pursuant to this subchapter. The registry must include the following information on each registrant:

- A. The registrant's name, aliases, date of birth, sex, race, height, weight, eye color, mailing address and physical location of expected domicile and residence; [PL 2005, c. 423, §9 (AMD).]
- B. Place of employment and college or school being attended, if applicable, and the corresponding address and location; [PL 2003, c. 371, §4 (AMD).]
- C. Offense history; [PL 1999, c. 437, §2 (NEW).]
- D. Notation of any treatment received for a mental abnormality or personality disorder; [PL 1999, c. 437, §2 (NEW).]
- E. A photograph and set of fingerprints; [PL 1999, c. 437, §2 (NEW).]
- F. A description of the offense for which the registrant was convicted, the date of conviction and the sentence imposed; and [PL 2003, c. 711, Pt. C, §17 (AMD); PL 2003, c. 711, Pt. D, §2 (AFF).]
- G. Any other information the bureau determines important. [PL 1999, c. 437, §2 (NEW).]
[PL 2005, c. 423, §9 (AMD).]

2. National or regional registry. The bureau is authorized to make the registry available to and accept files from a national or regional registry of registrants for the purpose of sharing information. [PL 2003, c. 711, Pt. C, §18 (AMD); PL 2003, c. 711, Pt. D, §2 (AFF).]

3. Registration form. The bureau shall develop a standardized registration form to be made available to the appropriate reporting authorities and persons required to register. [PL 1999, c. 437, §2 (NEW).]

4. Verification form. The bureau shall develop and mail a nonforwardable verification form to the last reported mailing address of each person required to meet the verification requirements of this chapter. [PL 1999, c. 437, §2 (NEW).]

5. Sexually violent predator directory.
[PL 2003, c. 371, §5 (RP).]

6. Distribution of information to department and law enforcement agencies. The bureau shall distribute information described in subsection 1 to the department and law enforcement agencies having jurisdiction over the address and location of the registrant's domicile, residence, place of employment and college or school being attended. [PL 2005, c. 423, §10 (AMD).]

7. Rules.
[PL 2005, c. 423, §11 (RP).]

8. Criminal justice agency access to information. The bureau shall provide access to the information described in subsection 1 to criminal justice agencies. For purposes of this subsection, "criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4. [PL 2013, c. 267, Pt. B, §28 (AMD).]

9. Public access to information. The bureau shall provide information to the public as follows.

- A. The bureau shall post on the Internet for public inspection the following information concerning a registrant:

- (1) The registrant's name, date of birth and photograph;
- (2) The registrant's city or town of domicile and residence;
- (3) The registrant's place of employment and college or school being attended, if applicable, and the corresponding address and location;
- (4) The statutory citation and name of the offense for which the registrant was convicted; and
- (5) The registrant's designation as a 10-year registrant or a lifetime registrant. [PL 2011, c. 307, §1 (AMD).]

B. Upon receiving a written request that includes the name and date of birth of a registrant, the bureau shall provide the following information concerning a registrant to the requestor:

- (1) The registrant's name, aliases, date of birth, sex, race, height, weight, eye color, mailing address and physical location of domicile and residence;
- (2) The registrant's place of employment and college or school being attended, if applicable, and the corresponding address and location;
- (3) A description of the offense for which the registrant was convicted, the date of conviction and the sentence imposed; and
- (4) The registrant's photograph. [PL 2005, c. 423, §12 (AMD).]

[PL 2011, c. 307, §1 (AMD).]

9-A. Registry information. Registry information created, collected or maintained by the bureau, including, but not limited to, information relating to the identity of persons accessing the registry, is confidential, except the following are public records:

A. Information provided to the public pursuant to subsection 9; and [PL 2011, c. 299, §1 (NEW).]

B. Applications and bureau decisions, including any documents made part of those decisions, pursuant to section 11202-A. [PL 2011, c. 299, §1 (NEW).]
[PL 2011, c. 299, §1 (NEW).]

10. Registrant access to information. The bureau shall provide all information described in subsection 1, paragraphs A to F to a registrant who requests that person's own information. The process for access and review of that information is governed by Title 16, section 709.
[PL 2013, c. 267, Pt. B, §29 (AMD).]

11. Maintenance by bureau. Only the bureau is authorized to maintain a sex offender registry on the Internet for purposes of public access as described in subsection 9.
[PL 2005, c. 545, §1 (AMD).]

12. Law enforcement agency website. A law enforcement agency may maintain its own sex offender website and may make that information available for use by the public if:

- A. A notice is prominently posted on the website that expressly states that the website is not the official state sex offender registry under subsection 1 and that the law enforcement agency posting the website is solely responsible for the website's content; [PL 2005, c. 545, §2 (NEW).]
- B. The website provides a link to the bureau's Internet sex offender registry under subsection 1; [PL 2005, c. 545, §2 (NEW).]
- C. The website contains information regarding only registrants who are domiciled, reside, attend college or school or work within the posting law enforcement agency's jurisdiction; and [PL 2005, c. 545, §2 (NEW).]

D. The information on the website is updated by the law enforcement agency as frequently as available resources permit, but no less than every 7 days. The law enforcement agency shall also prominently post on the website the date and time of the most recent update to the website. [PL 2005, c. 545, §2 (NEW).]

[PL 2005, c. 545, §2 (NEW).]

✓ **13. Access to registrant information existing in electronic form restricted.** Notwithstanding Title 1, chapter 13:

A. The bureau may not disseminate in electronic form information about a registrant that is created, collected or maintained in electronic form by or for the bureau, except as made available to the public through the bureau's Internet website pursuant to subsection 9 and made available to the Background Check Center established pursuant to Title 22, chapter 1691; and [PL 2015, c. 299, §26 (AMD).]

B. Except as made available to the public through an Internet website maintained by a law enforcement agency pursuant to subsection 12, a law enforcement agency may not disseminate in electronic form information about a registrant that is collected or maintained in electronic form by or for the law enforcement agency. [PL 2011, c. 299, §3 (NEW).]

[PL 2015, c. 299, §26 (AMD).]

SECTION HISTORY

PL 1999, c. 437, §2 (NEW). PL 2003, c. 371, §§4-7 (AMD). PL 2003, c. 711, §§C17-20 (AMD). PL 2003, c. 711, §D2 (AFF). PL 2005, c. 423, §§9-13 (AMD). PL 2005, c. 545, §§1,2 (AMD). PL 2011, c. 299, §§1-3 (AMD). PL 2011, c. 307, §1 (AMD). PL 2013, c. 267, Pt. B, §§28, 29 (AMD). PL 2015, c. 299, §26 (AMD).

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STATUTE: 34-A MRSA §11221, sub-§13

AGENCY: State Bureau of Identification, Department of Public Safety

CONTACT PERSON: Rebecca Graham

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY
MAINE STATE POLICE
OFFICE OF THE DIRECTOR OF POLICY

To: Sen. Anne Carney, Members of the Right to Know Advisory Committee
Fr: Rebecca J. Graham, Director of Policy, FOAA & Legislative Affairs
Re: Right to Know Advisory Committee Department Questionnaire
Date: October 6, 2026

Please accept this combined response for our agency to review and report back the application of public records exceptions in the following sections of law: 34-A MRSA §11221, sub-§9-A, 34-A MRSA §11221, sub-§13, 34-A MRSA §11281, sub-§9, 34-A MRSA §11281, sub-§12, 34-B MRSA §3864, sub-§12.

The Department recommends retaining the existing exceptions contained in 34-A M.R.S. §11221(9-A) and (13), 34-A M.R.S. §11281(9) and (12), and 34-B M.R.S. §3864(12). Although these provisions address different records and operate in somewhat different ways, each reflects an important legislative determination that transparency in government must be balanced against privacy, public safety, the integrity of sensitive information systems, and the consequences of unrestricted dissemination of personally identifiable information.

The exceptions contained in 34-A M.R.S. §§11221 and 11281 relate to information maintained as part of Maine's sex offender registry. Sections 11221(9-A) and 11281(9) establish the basic confidentiality of registry information created, collected, or maintained by the State Bureau of Identification while expressly preserving public access to the categories of information the Legislature has determined should be publicly available. Sections 11221(13) and 11281(12) serve a related but distinct purpose by restricting the electronic dissemination of registrant information outside the specifically authorized means of public access. Thus, these statutes do not remove sex offender information from public scrutiny. Rather, they establish the manner and extent to which sensitive information may be publicly disseminated.

That distinction has become increasingly important as the nature of public records requests has changed. The Department has experienced an approximately 500 percent increase in targeted requests seeking information about particular individuals appearing in public safety records. These requests are materially

different from traditional requests seeking to provide transparency into government policy, expenditure, investigation practice, or other governmental activity. Maine's Freedom of Access Act expressly identifies openness in the conduct of the people's business and public inspection of the records of governmental actions as its central purposes. The State's own FOAA guidance similarly describes the law as providing broad access to government records while protecting legitimate governmental interests and individual privacy.

Increasingly, however, public records laws are also being used to aggregate information about individual citizens across multiple government databases. Artificial intelligence has significantly reduced the effort necessary to formulate large numbers of highly particularized requests and identify potentially responsive data fields. The corresponding work has not been reduced for the agency receiving those requests. A request generated or refined in seconds may require multiple days of employee time to review to locate responsive records, determine which statutory confidentiality provisions apply, identify information concerning third parties, perform required redactions, and conduct the legal review necessary to ensure that protected information is not inadvertently disclosed. This is placing a significant burden on all agencies and costing hundreds of hours of staff time to address.

The Department is also receiving requests whose apparent purpose is large-scale data acquisition rather than examination of governmental conduct. Public safety information has commercial value, and audio and visual material in law enforcement records can be collected, combined with information from other sources, repackaged, and sold or commercialized through a platform where sensational content increases content revenue. Once information is released electronically, the practical ability of the State to control subsequent aggregation, redistribution, or misuse disappears.

The electronic-distribution restrictions in §§11221(13) and 11281(12) are particularly significant in that environment. They allow the agency to determine affirmatively what registry information should be broadly available electronically rather than permitting the entirety of an underlying government database to become a source for unrestricted secondary data mining.

The Department does not view these developments as a reason to diminish meaningful public access to information about government. They do, however, reinforce the continuing need for carefully drawn statutory exceptions that distinguish between transparency concerning governmental conduct and unrestricted dissemination of sensitive information about identifiable individuals. Removal of these exceptions would not simply increase the public's ability to evaluate agency operations; or improve safety, it could materially alter the amount, format, and scalability of personal information available for aggregation.

Section 3864(12) presents a somewhat different issue. That statute requires a court issuing an involuntary commitment order to transmit an abstract of the order to the State Bureau of Identification. The statute requires identifying information concerning the individual, as well as the court's ruling and the required notification concerning firearms restrictions. The abstract is expressly confidential and is not a public record, although SBI may provide it to criminal justice agencies for legitimate law-enforcement purposes, the FBI's National Instant Criminal Background Check System, and concealed-firearm permit issuing authorities for the statutorily specified purposes.

The confidentiality exception in §3864(12) remains important. An involuntary commitment record involves extraordinarily sensitive personal information. Its legitimate use is narrowly defined: principally to ensure that legally operative firearms prohibitions can be identified and enforced. Making these abstracts generally available under FOIA would expose sensitive information about individuals without materially advancing public understanding of how government performs its functions.

There is, however, a legitimate operational concern with the identifying information accompanying these records that should be addressed independently of the public records exception. Section 3864(12) currently requires the abstract to include the person's name, date of birth, and gender. In practical application, the available identifying information has not always been sufficient to distinguish conclusively between individuals with the same or similar names and dates of birth, particularly when a person is attempting to purchase a firearm outside Maine. This can result in an individual who is not the subject of the Maine commitment order being initially flagged as potentially prohibited and having to undertake additional steps so that identity can be verified before the transaction proceeds. While infrequent, the agency has been notified of such issues on enough occasions to be concerning.

That is an important problem, but it is fundamentally a record-identification problem rather than a public-access problem. Eliminating or weakening the confidentiality exception would not resolve it. A more direct solution would be to improve the identifying information transmitted by the court so SBI and the relevant federal system have an additional reliable identifier with which to distinguish individuals. The objective should be to improve identity matching while continuing to limit collection and disclosure to information reasonably necessary for the statutory purpose.

This approach separates two issues that should not be conflated. The first is whether confidential involuntary-commitment information should become publicly available. The Department believes the existing exception remains necessary and

appropriately protects highly sensitive information. The second is whether the information supplied through the confidential governmental process is sufficiently precise to avoid erroneous identity matches. That issue deserves attention, but the appropriate response is to improve the quality of the identifying information transmitted rather than remove the confidentiality protection surrounding the record.

More broadly, these exceptions illustrate why periodic review of public records exceptions should consider not only whether the original justification for confidentiality continues to exist, but also how modern technology has changed the consequences of disclosure. The practical difference between allowing a member of the public to inspect an identified government record and supplying large quantities of information capable of instantaneous aggregation, profiling, redistribution, and commercial resale is substantial.

The Department strongly supports transparency concerning its operations, decisions, policies, and exercise of governmental authority. At the same time, transparency should not inadvertently convert public safety information systems into repositories from which comprehensive dossiers about individual citizens can be assembled. The significant increase in individualized requests, the ability of artificial intelligence to generate highly targeted requests, and the growing commercial interest in acquiring and repackaging government data make carefully tailored confidentiality and electronic-dissemination exceptions more important today, not less. The staffing burden these requests place on all public agencies should be examined in greater detail as well.

For these reasons, the Department recommends maintaining the exceptions in 34-A M.R.S. §11221(9-A) and (13), 34-A M.R.S. §11281(9) and (12), and 34-B M.R.S. §3864(12), while separately working with the Judicial Branch and other appropriate partners to improve the identifying information associated with §3864(12) transmissions and reduce the potential for erroneous identity matches.

Reference #11
34-A MRSA §11281, sub-§9

§11281. Maintenance of sex offender registry

1. Maintenance of registry. The bureau shall establish and maintain a registry of persons required to register pursuant to this subchapter, referred to in this section as "the registry." After initial registration, the registry must include the following information on each registrant:

- A. The registrant's name, aliases, date of birth, sex, race, height, weight, eye color, land line and cellular telephone numbers, Internet identifiers, mailing address and physical location of expected domicile and residence. For purposes of this paragraph, "Internet identifiers" means e-mail addresses and other designations used for self-identification or routing in Internet communication or posting; [PL 2011, c. 663, §3 (NEW).]
- B. Place of employment and college or school being attended, if applicable, and the corresponding mailing address and physical location; [PL 2011, c. 663, §3 (NEW).]
- C. Offense history; [PL 2011, c. 663, §3 (NEW).]
- D. A current photograph and set of fingerprints; [PL 2011, c. 663, §3 (NEW).]
- E. A description of the offense for which the registrant was convicted, the date of conviction and the sentence imposed; [PL 2011, c. 663, §3 (NEW).]
- F. Whether the registrant is a Tier I registrant, Tier II registrant or Tier III registrant; [PL 2011, c. 663, §3 (NEW).]
- G. A copy of any driver's license information and copy of the driver's license; [PL 2011, c. 663, §3 (NEW).]
- H. A copy of any professional license; [PL 2011, c. 663, §3 (NEW).]
- I. Passport and immigration documents and social security number; [PL 2011, c. 663, §3 (NEW).]
- J. Temporary lodging and dates of travel; [PL 2011, c. 663, §3 (NEW).]
- K. Information about motor vehicles owned, leased or used and registration and location of those motor vehicles. For purposes of this paragraph, "lease" means a transfer of the right to possession and use of a motor vehicle for a term of 30 days or more in return for consideration; and [PL 2011, c. 663, §3 (NEW).]
- L. Any other information the bureau determines important. [PL 2011, c. 663, §3 (NEW).]
[PL 2015, c. 280, §13 (AMD).]

2. National or regional registry. The bureau is authorized to make the registry available to and accept files from a national or regional registry of registrants for the purpose of sharing information. [PL 2011, c. 663, §3 (NEW).]

3. Registration form. The bureau shall develop a standardized registration form to be made available to the appropriate reporting authorities and persons required to register. [PL 2011, c. 663, §3 (NEW).]

4. Verification form. The bureau shall develop and mail a nonforwardable verification form to the last reported mailing address of each person required to meet the verification requirements of this chapter. [PL 2011, c. 663, §3 (NEW).]

5. Distribution of information to department and law enforcement agencies. The bureau shall distribute information described in subsection 1 to the department and law enforcement agencies having jurisdiction over the mailing address and physical location of the registrant's domicile, residence, place of employment and college or school being attended, if applicable. [PL 2011, c. 663, §3 (NEW).]

6. Criminal justice agency access to information. The bureau shall provide access to the information described in subsection 1 to criminal justice agencies. For purposes of this subsection, "criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4. [PL 2013, c. 267, Pt. B, §30 (AMD).]

7. Public access to registrant information. After initial registration, the bureau shall provide information to the public as follows.

A. The bureau shall post on the Internet for public inspection the following information concerning a registrant who is a Tier I registrant, Tier II registrant or Tier III registrant:

- (1) The registrant's name, aliases and date of birth and a current photograph;
- (2) The registrant's city or town of domicile and residence;
- (3) The registrant's place of employment and college or school being attended, if applicable, and the corresponding mailing address and physical location;
- (4) The statutory citation and name of the offense for which the registrant was convicted;
- (5) Whether the registrant is a Tier I registrant, a Tier II registrant or a Tier III registrant;
- (6) Verification requirements and date of last verification; and
- (7) The registrant's address and its location on a map. [PL 2011, c. 663, §3 (NEW).]

B. The bureau shall establish an e-mail notification system to alert a member of the public who has subscribed annually to the e-mail notification system when a registrant moves into the subscriber's geographic area. [PL 2011, c. 663, §3 (NEW).]

C. Upon receiving a written request that includes the name and date of birth of a registrant, the bureau shall provide the following information concerning a registrant to the requestor:

- (1) The registrant's name, aliases, date of birth, sex, race, height, weight, eye color, mailing address and physical location of domicile and residence;
- (2) The registrant's place of employment and college or school being attended, if applicable, and the corresponding mailing address and physical location;
- (3) A description of the offense for which the registrant was convicted, the date of conviction and the sentence imposed; and
- (4) The registrant's photograph. [PL 2011, c. 663, §3 (NEW).]

[PL 2015, c. 280, §14 (AMD).]

8. Registrant access to information. The bureau shall provide all information described in subsection 1 to a registrant who requests that person's own information. [PL 2011, c. 663, §3 (NEW).]

9. Registry information. Registry information created, collected or maintained by the bureau, including, but not limited to, information relating to the identity of persons accessing the registry, is confidential except information provided to the public pursuant to subsection 7. [PL 2011, c. 663, §3 (NEW).]

10. Maintenance by bureau. Only the bureau is authorized to maintain a sex offender registry on the Internet for purposes of public access. [PL 2011, c. 663, §3 (NEW).]

11. Law enforcement agency website. Notwithstanding subsection 10, a law enforcement agency may maintain its own sex offender website and may make that information available for use by the public if:

A. A notice is prominently posted on the website that expressly states that the website is not the official state sex offender registry under subsection 7, paragraph A and that the law enforcement agency posting the website is solely responsible for the website's content; [PL 2011, c. 663, §3 (NEW).]

B. The website provides a link to the bureau's Internet sex offender registry under subsection 7, paragraph A; [PL 2011, c. 663, §3 (NEW).]

C. The website contains information regarding only registrants who are domiciled, reside, attend college or school or work within the posting law enforcement agency's jurisdiction; and [PL 2011, c. 663, §3 (NEW).]

D. The information on the website is updated by the law enforcement agency as frequently as available resources permit, but no less often than every 7 days. The law enforcement agency shall also prominently post on the website the date and time of the most recent update to the website. [PL 2011, c. 663, §3 (NEW).]

[PL 2011, c. 663, §3 (NEW).]

12. Access to registrant information existing in electronic form restricted. Notwithstanding Title 1, chapter 13:

A. The bureau may not disseminate in electronic form information about a registrant that is created, collected or maintained in electronic form by or for the bureau, except for the information provided pursuant to subsection 2 and made available to the public through the bureau's website pursuant to subsection 7, paragraph A and made available to the Background Check Center established pursuant to Title 22, chapter 1691; and [PL 2015, c. 299, §27 (AMD).]

B. Except for information made available to the public through a website maintained by a law enforcement agency pursuant to subsection 11, a law enforcement agency may not disseminate in electronic form information about a registrant that is collected or maintained in electronic form by or for that law enforcement agency. [PL 2011, c. 663, §3 (NEW).]

[PL 2015, c. 299, §27 (AMD).]

SECTION HISTORY

PL 2011, c. 663, §3 (NEW). PL 2013, c. 267, Pt. B, §30 (AMD). PL 2015, c. 280, §§13, 14 (AMD). PL 2015, c. 299, §27 (AMD).

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STATUTE: 34-A MRSA §11281, sub-§9

AGENCY: State Bureau of Identification, Department of Public Safety

CONTACT PERSON: Rebecca Graham

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY
MAINE STATE POLICE
OFFICE OF THE DIRECTOR OF POLICY

To: Sen. Anne Carney, Members of the Right to Know Advisory Committee
Fr: Rebecca J. Graham, Director of Policy, FOAA & Legislative Affairs
Re: Right to Know Advisory Committee Department Questionnaire
Date: October 6, 2026

Please accept this combined response for our agency to review and report back the application of public records exceptions in the following sections of law: 34-A MRSA §11221, sub-§9-A, 34-A MRSA §11221, sub-§13, 34-A MRSA §11281, sub-§9, 34-A MRSA §11281, sub-§12, 34-B MRSA §3864, sub-§12.

The Department recommends retaining the existing exceptions contained in 34-A M.R.S. §11221(9-A) and (13), 34-A M.R.S. §11281(9) and (12), and 34-B M.R.S. §3864(12). Although these provisions address different records and operate in somewhat different ways, each reflects an important legislative determination that transparency in government must be balanced against privacy, public safety, the integrity of sensitive information systems, and the consequences of unrestricted dissemination of personally identifiable information.

The exceptions contained in 34-A M.R.S. §§11221 and 11281 relate to information maintained as part of Maine's sex offender registry. Sections 11221(9-A) and 11281(9) establish the basic confidentiality of registry information created, collected, or maintained by the State Bureau of Identification while expressly preserving public access to the categories of information the Legislature has determined should be publicly available. Sections 11221(13) and 11281(12) serve a related but distinct purpose by restricting the electronic dissemination of registrant information outside the specifically authorized means of public access. Thus, these statutes do not remove sex offender information from public scrutiny. Rather, they establish the manner and extent to which sensitive information may be publicly disseminated.

That distinction has become increasingly important as the nature of public records requests has changed. The Department has experienced an approximately 500 percent increase in targeted requests seeking information about particular individuals appearing in public safety records. These requests are materially

different from traditional requests seeking to provide transparency into government policy, expenditure, investigation practice, or other governmental activity. Maine's Freedom of Access Act expressly identifies openness in the conduct of the people's business and public inspection of the records of governmental actions as its central purposes. The State's own FOAA guidance similarly describes the law as providing broad access to government records while protecting legitimate governmental interests and individual privacy.

Increasingly, however, public records laws are also being used to aggregate information about individual citizens across multiple government databases. Artificial intelligence has significantly reduced the effort necessary to formulate large numbers of highly particularized requests and identify potentially responsive data fields. The corresponding work has not been reduced for the agency receiving those requests. A request generated or refined in seconds may require multiple days of employee time to review to locate responsive records, determine which statutory confidentiality provisions apply, identify information concerning third parties, perform required redactions, and conduct the legal review necessary to ensure that protected information is not inadvertently disclosed. This is placing a significant burden on all agencies and costing hundreds of hours of staff time to address.

The Department is also receiving requests whose apparent purpose is large-scale data acquisition rather than examination of governmental conduct. Public safety information has commercial value, and audio and visual material in law enforcement records can be collected, combined with information from other sources, repackaged, and sold or commercialized through a platform where sensational content increases content revenue. Once information is released electronically, the practical ability of the State to control subsequent aggregation, redistribution, or misuse disappears.

The electronic-distribution restrictions in §§11221(13) and 11281(12) are particularly significant in that environment. They allow the agency to determine affirmatively what registry information should be broadly available electronically rather than permitting the entirety of an underlying government database to become a source for unrestricted secondary data mining.

The Department does not view these developments as a reason to diminish meaningful public access to information about government. They do, however, reinforce the continuing need for carefully drawn statutory exceptions that distinguish between transparency concerning governmental conduct and unrestricted dissemination of sensitive information about identifiable individuals. Removal of these exceptions would not simply increase the public's ability to evaluate agency operations; or improve safety, it could materially alter the amount, format, and scalability of personal information available for aggregation.

Section 3864(12) presents a somewhat different issue. That statute requires a court issuing an involuntary commitment order to transmit an abstract of the order to the State Bureau of Identification. The statute requires identifying information concerning the individual, as well as the court's ruling and the required notification concerning firearms restrictions. The abstract is expressly confidential and is not a public record, although SBI may provide it to criminal justice agencies for legitimate law-enforcement purposes, the FBI's National Instant Criminal Background Check System, and concealed-firearm permit issuing authorities for the statutorily specified purposes.

The confidentiality exception in §3864(12) remains important. An involuntary commitment record involves extraordinarily sensitive personal information. Its legitimate use is narrowly defined: principally to ensure that legally operative firearms prohibitions can be identified and enforced. Making these abstracts generally available under FOAA would expose sensitive information about individuals without materially advancing public understanding of how government performs its functions.

There is, however, a legitimate operational concern with the identifying information accompanying these records that should be addressed independently of the public records exception. Section 3864(12) currently requires the abstract to include the person's name, date of birth, and gender. In practical application, the available identifying information has not always been sufficient to distinguish conclusively between individuals with the same or similar names and dates of birth, particularly when a person is attempting to purchase a firearm outside Maine. This can result in an individual who is not the subject of the Maine commitment order being initially flagged as potentially prohibited and having to undertake additional steps so that identity can be verified before the transaction proceeds. While infrequent, the agency has been notified of such issues on enough occasions to be concerning.

That is an important problem, but it is fundamentally a record-identification problem rather than a public-access problem. Eliminating or weakening the confidentiality exception would not resolve it. A more direct solution would be to improve the identifying information transmitted by the court so SBI and the relevant federal system have an additional reliable identifier with which to distinguish individuals. The objective should be to improve identity matching while continuing to limit collection and disclosure to information reasonably necessary for the statutory purpose.

This approach separates two issues that should not be conflated. The first is whether confidential involuntary-commitment information should become publicly available. The Department believes the existing exception remains necessary and

appropriately protects highly sensitive information. The second is whether the information supplied through the confidential governmental process is sufficiently precise to avoid erroneous identity matches. That issue deserves attention, but the appropriate response is to improve the quality of the identifying information transmitted rather than remove the confidentiality protection surrounding the record.

More broadly, these exceptions illustrate why periodic review of public records exceptions should consider not only whether the original justification for confidentiality continues to exist, but also how modern technology has changed the consequences of disclosure. The practical difference between allowing a member of the public to inspect an identified government record and supplying large quantities of information capable of instantaneous aggregation, profiling, redistribution, and commercial resale is substantial.

The Department strongly supports transparency concerning its operations, decisions, policies, and exercise of governmental authority. At the same time, transparency should not inadvertently convert public safety information systems into repositories from which comprehensive dossiers about individual citizens can be assembled. The significant increase in individualized requests, the ability of artificial intelligence to generate highly targeted requests, and the growing commercial interest in acquiring and repackaging government data make carefully tailored confidentiality and electronic-dissemination exceptions more important today, not less. The staffing burden these requests place on all public agencies should be examined in greater detail as well.

For these reasons, the Department recommends maintaining the exceptions in 34-A M.R.S. §11221(9-A) and (13), 34-A M.R.S. §11281(9) and (12), and 34-B M.R.S. §3864(12), while separately working with the Judicial Branch and other appropriate partners to improve the identifying information associated with §3864(12) transmissions and reduce the potential for erroneous identity matches.

Reference #12

34-A MRSA §11281, sub-§12

§11281. Maintenance of sex offender registry

1. Maintenance of registry. The bureau shall establish and maintain a registry of persons required to register pursuant to this subchapter, referred to in this section as "the registry." After initial registration, the registry must include the following information on each registrant:

A. The registrant's name, aliases, date of birth, sex, race, height, weight, eye color, land line and cellular telephone numbers, Internet identifiers, mailing address and physical location of expected domicile and residence. For purposes of this paragraph, "Internet identifiers" means e-mail addresses and other designations used for self-identification or routing in Internet communication or posting; [PL 2011, c. 663, §3 (NEW).]

B. Place of employment and college or school being attended, if applicable, and the corresponding mailing address and physical location; [PL 2011, c. 663, §3 (NEW).]

C. Offense history; [PL 2011, c. 663, §3 (NEW).]

D. A current photograph and set of fingerprints; [PL 2011, c. 663, §3 (NEW).]

E. A description of the offense for which the registrant was convicted, the date of conviction and the sentence imposed; [PL 2011, c. 663, §3 (NEW).]

F. Whether the registrant is a Tier I registrant, Tier II registrant or Tier III registrant; [PL 2011, c. 663, §3 (NEW).]

G. A copy of any driver's license information and copy of the driver's license; [PL 2011, c. 663, §3 (NEW).]

H. A copy of any professional license; [PL 2011, c. 663, §3 (NEW).]

I. Passport and immigration documents and social security number; [PL 2011, c. 663, §3 (NEW).]

J. Temporary lodging and dates of travel; [PL 2011, c. 663, §3 (NEW).]

K. Information about motor vehicles owned, leased or used and registration and location of those motor vehicles. For purposes of this paragraph, "lease" means a transfer of the right to possession and use of a motor vehicle for a term of 30 days or more in return for consideration; and [PL 2011, c. 663, §3 (NEW).]

L. Any other information the bureau determines important. [PL 2011, c. 663, §3 (NEW).]
[PL 2015, c. 280, §13 (AMD).]

2. National or regional registry. The bureau is authorized to make the registry available to and accept files from a national or regional registry of registrants for the purpose of sharing information. [PL 2011, c. 663, §3 (NEW).]

3. Registration form. The bureau shall develop a standardized registration form to be made available to the appropriate reporting authorities and persons required to register. [PL 2011, c. 663, §3 (NEW).]

4. Verification form. The bureau shall develop and mail a nonforwardable verification form to the last reported mailing address of each person required to meet the verification requirements of this chapter. [PL 2011, c. 663, §3 (NEW).]

5. Distribution of information to department and law enforcement agencies. The bureau shall distribute information described in subsection 1 to the department and law enforcement agencies having jurisdiction over the mailing address and physical location of the registrant's domicile, residence, place of employment and college or school being attended, if applicable. [PL 2011, c. 663, §3 (NEW).]

6. Criminal justice agency access to information. The bureau shall provide access to the information described in subsection 1 to criminal justice agencies. For purposes of this subsection, "criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4. [PL 2013, c. 267, Pt. B, §30 (AMD).]

7. Public access to registrant information. After initial registration, the bureau shall provide information to the public as follows.

A. The bureau shall post on the Internet for public inspection the following information concerning a registrant who is a Tier I registrant, Tier II registrant or Tier III registrant:

- (1) The registrant's name, aliases and date of birth and a current photograph;
- (2) The registrant's city or town of domicile and residence;
- (3) The registrant's place of employment and college or school being attended, if applicable, and the corresponding mailing address and physical location;
- (4) The statutory citation and name of the offense for which the registrant was convicted;
- (5) Whether the registrant is a Tier I registrant, a Tier II registrant or a Tier III registrant;
- (6) Verification requirements and date of last verification; and
- (7) The registrant's address and its location on a map. [PL 2011, c. 663, §3 (NEW).]

B. The bureau shall establish an e-mail notification system to alert a member of the public who has subscribed annually to the e-mail notification system when a registrant moves into the subscriber's geographic area. [PL 2011, c. 663, §3 (NEW).]

C. Upon receiving a written request that includes the name and date of birth of a registrant, the bureau shall provide the following information concerning a registrant to the requestor:

- (1) The registrant's name, aliases, date of birth, sex, race, height, weight, eye color, mailing address and physical location of domicile and residence;
- (2) The registrant's place of employment and college or school being attended, if applicable, and the corresponding mailing address and physical location;
- (3) A description of the offense for which the registrant was convicted, the date of conviction and the sentence imposed; and
- (4) The registrant's photograph. [PL 2011, c. 663, §3 (NEW).]

[PL 2015, c. 280, §14 (AMD).]

8. Registrant access to information. The bureau shall provide all information described in subsection 1 to a registrant who requests that person's own information. [PL 2011, c. 663, §3 (NEW).]

9. Registry information. Registry information created, collected or maintained by the bureau, including, but not limited to, information relating to the identity of persons accessing the registry, is confidential except information provided to the public pursuant to subsection 7. [PL 2011, c. 663, §3 (NEW).]

10. Maintenance by bureau. Only the bureau is authorized to maintain a sex offender registry on the Internet for purposes of public access. [PL 2011, c. 663, §3 (NEW).]

11. Law enforcement agency website. Notwithstanding subsection 10, a law enforcement agency may maintain its own sex offender website and may make that information available for use by the public if:

A. A notice is prominently posted on the website that expressly states that the website is not the official state sex offender registry under subsection 7, paragraph A and that the law enforcement agency posting the website is solely responsible for the website's content; [PL 2011, c. 663, §3 (NEW).]

B. The website provides a link to the bureau's Internet sex offender registry under subsection 7, paragraph A; [PL 2011, c. 663, §3 (NEW).]

C. The website contains information regarding only registrants who are domiciled, reside, attend college or school or work within the posting law enforcement agency's jurisdiction; and [PL 2011, c. 663, §3 (NEW).]

D. The information on the website is updated by the law enforcement agency as frequently as available resources permit, but no less often than every 7 days. The law enforcement agency shall also prominently post on the website the date and time of the most recent update to the website. [PL 2011, c. 663, §3 (NEW).]

[PL 2011, c. 663, §3 (NEW).]

12. Access to registrant information existing in electronic form restricted. Notwithstanding Title 1, chapter 13:

A. The bureau may not disseminate in electronic form information about a registrant that is created, collected or maintained in electronic form by or for the bureau, except for the information provided pursuant to subsection 2 and made available to the public through the bureau's website pursuant to subsection 7, paragraph A and made available to the Background Check Center established pursuant to Title 22, chapter 1691; and [PL 2015, c. 299, §27 (AMD).]

B. Except for information made available to the public through a website maintained by a law enforcement agency pursuant to subsection 11, a law enforcement agency may not disseminate in electronic form information about a registrant that is collected or maintained in electronic form by or for that law enforcement agency. [PL 2011, c. 663, §3 (NEW).]

[PL 2015, c. 299, §27 (AMD).]

SECTION HISTORY

PL 2011, c. 663, §3 (NEW). PL 2013, c. 267, Pt. B, §30 (AMD). PL 2015, c. 280, §§13, 14 (AMD). PL 2015, c. 299, §27 (AMD).

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STATUTE: 34-A MRSA §11281, sub-§12

AGENCY: State Bureau of Identification, Department of Public Safety

CONTACT PERSON: Rebecca Graham

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY
MAINE STATE POLICE
OFFICE OF THE DIRECTOR OF POLICY

To: Sen. Anne Carney, Members of the Right to Know Advisory Committee
Fr: Rebecca J. Graham, Director of Policy, FOAA & Legislative Affairs
Re: Right to Know Advisory Committee Department Questionnaire
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appropriately protects highly sensitive information. The second is whether the information supplied through the confidential governmental process is sufficiently precise to avoid erroneous identity matches. That issue deserves attention, but the appropriate response is to improve the quality of the identifying information transmitted rather than remove the confidentiality protection surrounding the record.

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Reference #13
34-B MRSA §1207, sub-§1

§1207. Confidentiality of information

1. Generally. All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any client shall be kept confidential and may not be disclosed by any person, except that:

A. A client, a client's legal guardian, if any, or, if the client is a minor, the client's parent or legal guardian may give informed written consent to the disclosure of information; [RR 2019, c. 2, Pt. B, §86 (COR).]

B. Information may be disclosed if necessary to carry out the statutory functions of the department; the hospitalization provisions of chapter 3, subchapter 4; the purposes of section 3608; the purposes of Title 5, section 19506; the purposes of United States Public Law 99-319, dealing with the investigatory function of the independent agency designated with advocacy and investigatory functions under United States Public Law 88-164, Title I, Part C or United States Public Law 99-319; the investigation and hearing pursuant to Title 15, section 393, subsection 4-A; or the provision of mental health services by the Department of Corrections pursuant to Title 34-A, section 3031, 3069-A or 3069-B; [PL 2017, c. 475, Pt. A, §57 (AMD).]

B-1. [PL 2005, c. 397, Pt. A, §48 (RP).]

B-2. [PL 2007, c. 466, Pt. A, §56 (RP).]

B-3. [PL 2017, c. 475, Pt. A, §58 (RP).]

C. Information may be disclosed if ordered by a court of record, subject to any limitation in the Maine Rules of Evidence, Rule 503; [PL 1983, c. 459, §7 (NEW).]

C-1. Within 48 hours of a death reportable by the commissioner to the Chief Medical Examiner pursuant to Title 22, section 3025, subsection 1, paragraph E, the commissioner shall provide information on that death to the chairs of the joint standing committee of the Legislature having jurisdiction over health and human services matters. Within 30 days of the reportable death, the commissioner shall provide the members of the committee with a copy of the death report. Information and reports provided pursuant to this paragraph must maintain the confidentiality of the identity of all persons mentioned or referred to in the information and reports. [PL 1997, c. 605, §1 (NEW).]

D. Nothing in this subsection precludes disclosure, upon proper inquiry, of information relating to the physical condition or mental status of a client to that client's spouse or next of kin; [RR 2019, c. 2, Pt. B, §87 (COR).]

E. Nothing in this subsection precludes the disclosure of biographical or medical information concerning a client to commercial or governmental insurers, or to any other corporation, association or agency from which the department or a licensee of the department may receive reimbursement for the care and treatment, education, training or support of the client, if the recipient of the information uses it for no other purpose than to determine eligibility for reimbursement and, if eligibility exists, to make reimbursement; [PL 1989, c. 335, §2 (AMD).]

F. Nothing in this subsection precludes the disclosure or use of any information, including recorded or transcribed diagnostic and therapeutic interviews, concerning any client in connection with any educational or training program established between a public hospital and any college, university, hospital, psychiatric or counseling clinic or school of nursing, as long as, in the disclosure or use of the information as part of a course of instruction or training program, the client's identity remains undisclosed; [PL 2011, c. 691, Pt. A, §39 (AMD).]

G. [PL 2011, c. 691, Pt. A, §40 (RP).]

H. The names and dates of death of individuals who died while patients at the Augusta Mental Health Institute, the Bangor Mental Health Institute, the Dorothea Dix Psychiatric Center, the Riverview Psychiatric Center or the Pineland Hospital and Training Center may be made available to the public in accordance with rules adopted by the department. The rules must require the department to notify the public regarding the release of the information and to maintain the confidentiality of information concerning any deceased individual whose surviving relatives notify the department that they object to public disclosure. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A; and [PL 2015, c. 189, §1 (AMD).]

I. Nothing in this subsection precludes the disclosure of any information, except psychotherapy notes as defined in 45 Code of Federal Regulations, Section 164.501(2010), concerning a client to a state-designated statewide health information exchange that provides and maintains an individual protection mechanism by which a client may choose to opt in to allow the state-designated statewide health information exchange to disclose that client's health care information covered under this section to a health care practitioner or health care facility for purposes of treatment, payment and health care operations, as those terms are defined in 45 Code of Federal Regulations, Section 164.501. A state-designated statewide health information exchange also must satisfy the requirement in Title 22, section 1711-C, subsection 18, paragraph C of providing a general opt-out provision to a client at all times.

A state-designated statewide health information exchange may disclose a client's health care information covered under this section even if the client has not chosen to opt in to allow the state-designated statewide health information exchange to disclose the individual's health care information when, in a health care provider's judgment, disclosure is necessary to:

- (1) Avert a serious threat to the health or safety of others, if the conditions, as applicable, described in 45 Code of Federal Regulations, Section 164.512(j)(2010) are met; or
- (2) Prevent or respond to imminent and serious harm to the client and disclosure is to a provider for diagnosis or treatment. [PL 2011, c. 347, §11 (NEW).]

[RR 2019, c. 2, Pt. B, §86, 87 (COR).]

2. Statistical compilations and research. Confidentiality of records used for statistical compilations or research is governed as follows.

A. Persons engaged in statistical compilation or research may have access to treatment records of clients when needed for research, if:

- (1) The access is approved by the chief administrative officer of the mental health facility or the chief administrative officer's designee;
- (2) The research plan is first submitted to and approved by the chief administrative officer of the mental health facility, or the chief administrative officer's designee, where the person engaged in research or statistical compilation is to have access to communications and records; and
- (3) The records are not removed from the mental health facility that prepared them, except that data that do not identify clients or coded data may be removed from a mental health facility if the key to the code remains on the premises of the facility. [RR 2019, c. 2, Pt. B, §88 (COR).]

B. The chief administrative officer of the mental health facility and the person doing the research shall preserve the anonymity of the client and may not disseminate data that refer to the client by name, number or combination of characteristics that together could lead to the client's identification. [RR 2019, c. 2, Pt. B, §88 (COR).]

[RR 2019, c. 2, Pt. B, §88 (COR).]

3. Use by the commissioner. Confidentiality of information and records used by the commissioner for administration, planning or research is governed as follows.

A. A facility or a provider that receives funds from the department to provide services for persons eligible for such services under this Title shall send information and records to the commissioner, if requested by the commissioner pursuant to the department's obligation to maintain the overall responsibility for the care and treatment of persons receiving mental health services funded in full or in part by the State. [PL 2011, c. 542, Pt. A, §61 (RPR).]

B. The commissioner may collect and use the information and records for administration, planning or research, under the following conditions.

(1) The use of the information is subject to subsection 1, paragraph C.

(2) Data identifying particular clients by means other than case number or code shall be removed from all records and reports of information before issuance from the mental health facility which prepared the records and reports.

(3) A code shall be the exclusive means of identifying clients and shall be available to the commissioner and only the commissioner.

(4) The key to the code shall remain in the possession of the issuing facility and shall be available to the commissioner and only the commissioner.

(5) Members of the department may not release or disseminate to any other person, agency or department of government any information which refers to a client by name, numbers, address, birth date or other characteristics or combination of characteristics which could lead to the client's identification, except as otherwise required by law. [PL 1983, c. 459, §7 (NEW).]

[PL 2011, c. 542, Pt. A, §61 (AMD).]

4. Prohibited acts.

[PL 2007, c. 310, §1 (RP).]

4-A. Violation. Disclosure of client information in violation of this section is an offense under the licensing standards of the mental health professional committing the violation and must be promptly reported to the licensing board with jurisdiction for review, hearing and disciplinary action.

[PL 2007, c. 310, §2 (NEW).]

5. Permitted disclosure.

[PL 2007, c. 310, §3 (RP).]

5-A. Disclosure to family, caretakers. Under the following circumstances, a licensed mental health professional providing care to an adult client may disclose to a family member, to another relative, to a close personal friend or caretaker of the client or to anyone identified by the client, the client's health information that is directly relevant to the person's involvement with the client's care.

A. If a client with capacity to make health care decisions is either present or available prior to disclosure, the professional may disclose the information:

(1) When the client gives oral or written consent;

(2) When the client does not object in circumstances in which the client has the opportunity to object; or

(3) When the professional may reasonably infer from the circumstances that the client does not object. [PL 2007, c. 310, §4 (NEW).]

B. The professional may disclose the information if in the professional's judgment it is in the client's best interests to make the disclosure and the professional determines either that the client

lacks the capacity to make health care decisions or an emergency precludes the client from participating in the disclosure. [PL 2007, c. 310, §4 (NEW).]
[PL 2007, c. 310, §4 (NEW).]

6. Duty to provide information.
[PL 2007, c. 310, §5 (RP).]

6-A. Disclosure of danger. A licensed mental health professional shall disclose protected health information that the professional believes is necessary to avert a serious and imminent threat to health or safety when the disclosure is made in good faith to any person, including a target of the threat, who is reasonably able to prevent or minimize the threat.
[PL 2009, c. 451, §7 (AMD).]

7. Disclosure to law enforcement. A licensed mental health professional shall disclose protected health information when the disclosure is made in good faith for a law enforcement purpose to a law enforcement officer if the conditions, as applicable, are met as described in 45 Code of Federal Regulations, Section 164.512(f) (2008).
[PL 2009, c. 451, §8 (NEW).]

8. Disclosure of knowledge of firearms. A licensed mental health professional shall notify law enforcement when the notification is made in good faith that the licensed mental health professional has reason to believe that a person committed to a state mental health institute has access to firearms.
[PL 2009, c. 451, §9 (NEW).]

9. Disclosure for care management or coordination of care. Notwithstanding any provision of this section to the contrary, a health care practitioner may disclose without authorization health information for the purposes of care management or coordination of care pertaining to a client as provided in this subsection.

A. Disclosure is permitted to a health care practitioner or health care facility as defined in Title 22, section 1711-C, subsection 1. [PL 2013, c. 326, §2 (NEW).]

B. Disclosure is permitted to a payor or person engaged in payment for health care for the purpose of care management or coordination of care. [PL 2013, c. 326, §2 (NEW).]

C. Disclosure of psychotherapy notes is governed by 45 Code of Federal Regulations, Section 164.508(a)(2). [PL 2013, c. 326, §2 (NEW).]

D. A person who has made a disclosure under this subsection shall make a reasonable effort to notify the individual or the authorized representative of the individual of the disclosure. [PL 2013, c. 326, §2 (NEW).]

[PL 2013, c. 326, §2 (NEW).]

SECTION HISTORY

PL 1983, c. 459, §7 (NEW). PL 1983, c. 580, §4 (AMD). PL 1983, c. 626 (AMD). PL 1985, c. 495, §23 (AMD). PL 1985, c. 582 (AMD). PL 1989, c. 7, §N3 (AMD). PL 1989, c. 190 (AMD). PL 1989, c. 335, §§2,3 (AMD). PL 1991, c. 250 (AMD). PL 1993, c. 593, §1 (AMD). PL 1995, c. 497, §5 (AMD). PL 1995, c. 560, §K19 (AMD). PL 1995, c. 691, §4 (AMD). PL 1997, c. 422, §2 (AMD). PL 1997, c. 605, §1 (AMD). PL 2001, c. 354, §3 (AMD). PL 2003, c. 563, §§1-3 (AMD). RR 2005, c. 2, §22 (COR). PL 2005, c. 397, §§A47,48 (AMD). PL 2005, c. 683, §A57 (AMD). PL 2007, c. 286, §2 (AMD). PL 2007, c. 310, §§1-6 (AMD). PL 2007, c. 466, Pt. A, §56 (AMD). PL 2007, c. 609, §1 (AMD). PL 2007, c. 670, §17 (AMD). PL 2009, c. 415, Pt. A, §20 (AMD). PL 2009, c. 451, §§7-9 (AMD). PL 2011, c. 347, §§9-11 (AMD). PL 2011, c. 420, Pt. C, §§6, 7 (AMD). PL 2011, c. 542, Pt. A, §61 (AMD). PL 2011, c. 691, Pt. A, §§39, 40 (AMD). PL 2013, c. 132, §1 (AMD). PL 2013, c. 326, §2 (AMD). PL 2013, c. 434, §§7, 8 (AMD). PL 2015, c. 189, §1 (AMD). PL 2015, c. 329, Pt. A, §§21, 22 (AMD). PL 2017, c. 93, §1 (AMD).

PL 2017, c. 147, §§6, 7 (AMD). PL 2017, c. 475, Pt. A, §§57, 58 (AMD). RR 2019, c. 2, Pt. B, §§86-88 (COR).

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STATUTE: 34-B MRSA §1207, sub-§1

AGENCY: Department of Health and Human Services

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Reference #14
34-B MRSA §1223, sub-§10

§1223. Maine Developmental Services Oversight and Advisory Board

1. Composition. The Maine Developmental Services Oversight and Advisory Board, as established by Title 5, section 12004-J, subsection 15 and referred to in this section as "the board," consists of 15 members appointed by the Governor from a list of nominees proposed by the board pursuant to procedures established in the rules of the board.

A. The board shall submit nominees to the Governor at least 90 days prior to the expected date of each vacancy. [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

B. In making nominations, the board shall endeavor to ensure adequate representation at all times from different service regions of the State and from interested stakeholder groups, including but not limited to:

- (1) The protection and advocacy agency designated pursuant to Title 5, section 19502;
- (2) A statewide coalition that works to support and facilitate the ability of local and statewide self-advocacy organizations to network with each other and with national organizations;
- (3) A nonprofit organization that serves teens and young adults in the State with emotional and intellectual disabilities;
- (4) A statewide coalition that works to support and facilitate the ability of local and statewide self-advocacy organizations to network with each other and with national organizations; and
- (5) The Maine Developmental Disabilities Council. [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

C. In making the nominations and appointments, the board and the Governor shall endeavor to ensure that at least 8 of the members of the board are persons with intellectual disabilities or autism or family members, guardians or allies of persons with intellectual disabilities or autism who receive services funded by the Department of Health and Human Services. Of these members, at least 4 must be persons with intellectual disabilities or autism, referred to in this section as "self-advocates." [PL 2011, c. 542, Pt. A, §66 (AMD).]

Members of the board must include stakeholders involved in services and supports for persons with intellectual disabilities or autism in the State and other individuals interested in issues affecting persons with intellectual disabilities or autism. Employees of the Department of Health and Human Services may not be appointed as members of the board.
[PL 2011, c. 542, Pt. A, §66 (AMD).]

2. Terms. Members of the board serve 3-year terms. A member serves until a successor is appointed. A vacancy must be filled as soon as practicable by appointment for the unexpired term.
[PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

3. Chair. The board shall elect a chair from among its members.
[PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

4. Compensation. Members of the board are entitled to reimbursement of reasonable expenses incurred in order to serve on the board as provided in Title 5, section 12004-J, subsection 15. Members not otherwise compensated by their employers or other entities whom they represent are entitled to receive a per diem as established by rule or policy adopted by the board for their attendance at authorized meetings of the board.
[PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

5. Staff. The board may hire an executive director and clerical support staff.
[PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

6. Budget. The Department of Administrative and Financial Services shall administer the budget of the board. The board shall provide to the Commissioner of Administrative and Financial Services a proposed budget in accordance with a schedule agreed to by the chair and the Commissioner of Administrative and Financial Services. The Department of Administrative and Financial Services shall include in its estimate of expenditure and appropriation requirements filed pursuant to Title 5, section 1665 sufficient funds, listed in a separate account as a separate line item, to enable the board to perform its duties.

[PL 2021, c. 686, §4 (AMD).]

7. Maine Tort Claims Act. The board members and staff act as employees of the State, as defined in Title 14, section 8102, subsection 1, when engaged in official duties specified in this section or assigned by the board.

[PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

8. Oversight and advisory functions. The board shall:

A. Provide independent oversight over programs and services for adults with intellectual disabilities or autism that are provided, authorized, funded or supported by the department or any other agency or department of State Government. The board shall focus on systemic concerns affecting the rights of persons with intellectual disabilities or autism, including but not limited to issues surrounding health and safety, inclusion, identification of needs and desires of persons eligible for services by the department, the timely meeting of the identified needs and effective and efficient delivery of services and supports; and [PL 2011, c. 542, Pt. A, §66 (AMD).]

B. Provide advice and systemic recommendations to the commissioner, the Governor and the Legislature regarding policies, priorities, budgets and legislation affecting the rights and interests of persons with intellectual disabilities or autism. [PL 2011, c. 542, Pt. A, §66 (AMD).]

[PL 2011, c. 542, Pt. A, §66 (AMD).]

9. Powers and duties of the board. In order to carry out its oversight and advisory functions, the board has the following powers and duties.

A. The board shall hold at least one hearing or other forum each year that is open to the public in order to gather information about the availability, accessibility and quality of services available to persons with intellectual disabilities or autism and their families. [PL 2011, c. 542, Pt. A, §67 (AMD).]

B. The board may accept funds from the Federal Government, the State, a political subdivision of the State, individuals, foundations and corporations and may expend those funds for purposes consistent with the board's functions, powers and duties. [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

C. The board shall establish priorities for its oversight and systems advocacy work. In establishing priorities, the board shall consider the results of its work in addressing the priorities established in previous years. [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

D. The board shall report at least annually to the Governor and the Legislature on its activities and recommendations regarding policies, priorities, budgets and legislation affecting the rights and interests of persons with intellectual disabilities or autism. The board's annual report must include the board's assessment of its operations and progress in addressing the priorities established pursuant to paragraph C. The board's annual report must be made public and widely disseminated in a manner designed to inform interested stakeholders. [PL 2011, c. 542, Pt. A, §67 (AMD).]

E. The board may provide reports and recommendations to the commissioner on matters of systemic concern arising from the board's oversight role. The board may recommend that the department undertake the study of specific systemic issues as part of the department's annual quality assurance activities and strategies, and the board may collaborate and cooperate with the

department in the conduct of any such studies, if feasible. The commissioner shall provide a written response no later than 30 days following receipt of the recommendations from the board. [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

F. The board may refer individual cases that require investigation or action to the department, the protection and advocacy agency designated pursuant to Title 5, section 19502 or other appropriate agency. [PL 2011, c. 657, Pt. EE, §2 (AMD).]

[PL 2011, c. 542, Pt. A, §67 (AMD); PL 2011, c. 657, Pt. EE, §2 (AMD).]

10. Access to information. The board is entitled to access to information from the department necessary to carry out its functions. Except as provided in paragraphs D and E, information provided pursuant to this subsection may not contain personally identifying information about a person with intellectual disabilities or autism.

A. Within existing resources, the department shall provide the board, on a schedule to be agreed upon between the board and the department, reports on case management, reportable events, adult protective and rights investigations, unmet needs, crisis services, quality assurance, quality improvement, budgets and other reports that contain data about or report on the delivery of services to or for the benefit of persons with intellectual disabilities or autism, including reports developed by or on behalf of the department and reports prepared by others about the department. [PL 2021, c. 686, §5 (AMD).]

B. Within existing resources, the department, when requested by the board or pursuant to a written agreement with the board, shall release to the board information pertaining to alleged abuse, exploitation or neglect or an alleged dehumanizing practice or violation of rights of a person with intellectual disabilities or autism. [PL 2021, c. 686, §5 (AMD).]

C. [PL 2013, c. 310, §1 (RP).]

D. The board may examine confidential information in individual records with written permission of the person or that person's guardian. If the person or that person's guardian provides the board with written permission to examine confidential information, the board must maintain the confidentiality of the information as required by section 1207. [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

E. A member of the board or the board's staff may receive and examine confidential information when otherwise authorized to do so by law, including but not limited to when serving on a committee established by the department or other entity for which access to such information is necessary to perform the function of the committee. [PL 2021, c. 686, §5 (AMD).]

[PL 2021, c. 686, §5 (AMD).]

11. Rulemaking. The board shall adopt rules governing its operations, including rules establishing its bylaws. Rules adopted pursuant to this subsection must address:

A. Procedures for nominating persons to fill vacancies on the board; [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

B. Procedures for holding annual hearings or other alternative means of receiving input from citizens throughout the State pursuant to subsection 9; [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

C. Procedures for exercising its powers pursuant to subsection 10, paragraph D in a manner that is respectful of the rights, interests and opinions of persons whose records are at issue; [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

D. Procedures concerning the hiring of an executive director, including the method for selection and the role of the executive director and procedures concerning the supervision, compensation and

evaluation of the executive director; and [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

E. The provision of per diem stipends for members not otherwise compensated by their employers or other entities whom they represent for their attendance at authorized meetings of the board. [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

SECTION HISTORY

PL 2007, c. 356, §7 (NEW). PL 2007, c. 356, §31 (AFF). PL 2007, c. 695, Pt. D, §3 (AFF). PL 2011, c. 542, Pt. A, §§66-68 (AMD). PL 2011, c. 657, Pt. EE, §§2, 3 (AMD). PL 2013, c. 310, §1 (AMD). PL 2021, c. 686, §§4, 5 (AMD).

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STATUTE: 34-B MRSA §1223, sub-§10

ENTITY: Maine Developmental Services Oversight and Advisory Board

CONTACT PERSON: Cullen Ryan

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

QUESTIONS

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Description of the records subject to the exemption per Title 34-B, §1223 Maine Developmental Services Oversight and Advisory Board, 10. D & E.

D. The board may examine confidential information in individual records with written permission of the person or that person's guardian. If the person or that person's guardian provides the board with written permission to examine confidential information, the board must maintain the confidentiality of the information as required by section 1207. [PL 2007, c. 356, §7 (NEW); PL 2007, c. 695, Pt. D, §3 (AFF).]

E. A member of the board or the board's staff may receive and examine confidential information when otherwise authorized to do so by law, including but not limited to when serving on a committee established by the department or other entity for which access to such information is necessary to perform the function of the committee. [PL 2021, c. 686, §5 (AMD).]

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

The MDSOAB supports continuation of this exception.

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

Yes.

4. Does your agency recommend changes to this exception?

No

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

The board typically does not review confidential information.

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

n/a

Reference #15
34-B MRSA §3864, sub-§5

STATUTE: 34-B MRSA §3864, sub-§5

ENTITY: Maine Judicial Branch

CONTACT PERSON: Julia Finn

RETURN BY: October 23, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

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

STATUTE: 34-B MRSA §3864, sub-§5

AGENCY: Judicial Branch

CONTACT PERSON: Julia Finn

RETURN BY: October 23, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

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

34-B MRS §3864(5) makes confidential hearings and reports of proceedings in mental health involuntary hospitalization and involuntary treatment/medication cases. The records are part of the court case file and are thus not subject to FOA.

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

Because this is a matter of public policy, the Judicial Branch defers to the Legislature to determine the appropriateness of this exception.

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

The Judicial Branch has not encountered any problems in applying this exception.

4. Does your agency recommend changes to this exception?

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

No.

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

None known.

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

§3864. Judicial procedure and commitment

1. Application. An application to the District Court to admit a person to a psychiatric hospital, filed under section 3863, subsection 5-A, must be accompanied by:

- A. The emergency application under section 3863, subsection 1; [PL 1983, c. 459, §7 (NEW).]
- B. The accompanying certificate of the medical practitioner under section 3863, subsection 2; [PL 2009, c. 651, §20 (AMD).]
- C. The certificate of the medical practitioner under section 3863, subsection 7; [PL 2021, c. 389, §3 (AMD).]
- D. A written statement, signed by the chief administrative officer of the psychiatric hospital, certifying that a copy of the application and the accompanying documents have been given personally to the patient and that the patient and the patient's guardian or next of kin, if any, have been notified of:
 - (1) The patient's right to retain an attorney or to have an attorney appointed;
 - (2) The patient's right to select or to have the patient's attorney select an independent examiner; and
 - (3) How to contact the District Court; and [PL 2009, c. 651, §20 (AMD).]
- E. A copy of the notice and instructions given to the patient. [PL 1997, c. 422, §14 (NEW).] [PL 2021, c. 389, §3 (AMD).]

1-A. Involuntary treatment. An application under this section may also include a request for an order of involuntary treatment under subsection 7-A. [PL 2007, c. 446, §2 (NEW); PL 2007, c. 446, §7 (AFF).]

2. Detention pending judicial determination. Notwithstanding any other provisions of this subchapter, a person, with respect to whom an application for the issuance of an order for hospitalization has been filed, may not be released or discharged during the pendency of the proceedings, unless:

- A. The District Court orders release or discharge upon the request of the patient or the patient's guardian, parent, spouse or next of kin; [PL 2007, c. 319, §10 (AMD).]
- B. The District Court orders release or discharge upon the report of the applicant that the person may be discharged with safety; [PL 1995, c. 496, §3 (AMD).]
- C. A court orders release or discharge upon a writ of habeas corpus under section 3804; [PL 2015, c. 309, §6 (AMD).]
- D. Upon request of the commissioner, the District Court orders the transfer of a patient in need of more specialized treatment to another psychiatric hospital. In the event of a transfer, the court shall transfer its file to the District Court having territorial jurisdiction over the receiving psychiatric hospital; or [PL 2015, c. 309, §7 (AMD).]
- E. The person has capacity to make an informed decision for informal voluntary admission, agrees to informal voluntary admission and the chief administrative officer of the hospital determines that informal voluntary admission is suitable. [PL 2015, c. 309, §8 (NEW).] [PL 2015, c. 309, §§6-8 (AMD).]

3. Notice of receipt of application. The giving of notice of receipt of application and date of hearing under this section is governed as follows.

- A. Upon receipt by the District Court of the application and accompanying documents specified in subsection 1, the court shall cause written notice of the application and date of hearing:

(1) To be mailed within 2 days of filing to the person; and

(2) To be mailed to the person's guardian, if known, and to the person's spouse, parent or one of the person's adult children or, if none of these persons exist or if none of those persons can be located, to one of the person's next of kin or a friend, except that if the chief administrative officer has reason to believe that notice to any of these individuals would pose risk of harm to the person who is the subject of the application, notice to that individual may not be given. [PL 1997, c. 422, §15 (AMD).]

B. A docket entry is sufficient evidence that notice under this subsection has been given. [PL 1983, c. 459, §7 (NEW).]
[PL 1997, c. 422, §15 (AMD).]

4. Examination. Examinations under this section are governed as follows.

A. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1 and at least 3 days after the person who is the subject of the examination was notified by the psychiatric hospital of the proceedings and of that person's right to retain counsel or to select an examiner, the court shall cause the person to be examined by a medical practitioner. If the application includes a request for an order for involuntary treatment under subsection 7-A, the practitioner must be a medical practitioner who is qualified to prescribe medication relevant to the patient's care. If the person under examination or the counsel for that person selects a qualified examiner who is reasonably available, the court shall give preference to choosing that examiner. [PL 2009, c. 651, §21 (AMD).]

B. The examination must be held at a psychiatric hospital or at any other suitable place not likely to have a harmful effect on the mental health of the person. [PL 2009, c. 651, §21 (AMD).]

C. [PL 2007, c. 319, §10 (RP).]

D. [PL 2007, c. 319, §10 (RP).]

E. The examiner shall report to the court on:

(1) Whether the person is a mentally ill person within the meaning of section 3801, subsection 5;

(2) When the establishment of a progressive treatment plan under section 3873-A is at issue, whether a person is suffering from a severe and persistent mental illness within the meaning of section 3801, subsection 8-A;

(3) Whether the person poses a likelihood of serious harm within the meaning of section 3801, subsection 4-A;

(4) When involuntary treatment is at issue, whether the need for such treatment meets the criteria of subsection 7-A, paragraphs A and B;

(5) Whether adequate community resources are available for care and treatment of the person's mental illness; and

(6) Whether the person's clinical needs may be met by an order under section 3873-A to participate in a progressive treatment program. [PL 2009, c. 651, §21 (AMD).]

F. [PL 2007, c. 446, §3 (RP); PL 2007, c. 446, §7 (AFF).]

G. Opinions of the examiner may be based on personal observation or on history and information from other sources considered reliable by the examiner. [PL 2009, c. 651, §21 (NEW).]
[PL 2009, c. 651, §21 (AMD).]

5. Hearing. Hearings under this section are governed as follows.

A. The District Court shall hold a hearing on the application not later than 14 days from the date of the application. The District Court may separate the hearing on commitment from the hearing on involuntary treatment.

(1) For good cause shown, on a motion by any party or by the court on its own motion, the hearing on commitment or on involuntary treatment may be continued for a period not to exceed 21 additional days.

(2) If the hearing on commitment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application and order the person discharged forthwith.

(2-A) If the hearing on involuntary treatment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application for involuntary treatment.

(3) In computing the time periods set forth in this paragraph, the Maine Rules of Civil Procedure apply. [PL 2009, c. 651, §22 (AMD).]

A-1. Prior to the commencement of the hearing, the court shall inform the person that if an order of involuntary commitment is entered, that person is a prohibited person and may not own, possess or have under that person's control a firearm pursuant to Title 15, section 393, subsection 1. [PL 2007, c. 670, §18 (NEW).]

B. The hearing must be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have harmful effect on the mental health of the person. If the setting is outside the psychiatric hospital to which the patient is currently admitted, the Department of Health and Human Services shall bear the responsibility and expense of transporting the patient to and from the hearing. If the patient is to be admitted to a psychiatric hospital following the hearing, then the hospital from which the patient came shall transport the patient to the admitting psychiatric hospital. If the patient is to be released following the hearing, then the hospital from which the patient came shall return the patient to that hospital or, at the patient's request, return the patient to the patient's place of residence. [PL 2007, c. 319, §10 (AMD).]

C. The court shall receive all relevant and material evidence that may be offered in accordance with accepted rules of evidence and accepted judicial dispositions.

(1) The person, the applicant and all other persons to whom notice is required to be sent must be afforded an opportunity to appear at the hearing to testify and to present and cross-examine witnesses.

(2) The court may, in its discretion, receive the testimony of any other person and may subpoena any witness. [PL 2007, c. 319, §10 (AMD).]

D. The person must be afforded an opportunity to be represented by counsel, and, if neither the person nor others provide counsel, the court shall appoint counsel for the person. [PL 2007, c. 319, §10 (AMD).]

E. In addition to proving that the patient is a mentally ill individual, the applicant must show:

(1) By evidence of the patient's recent actions and behavior, that due to the patient's mental illness the patient poses a likelihood of serious harm; and

(2) That, after full consideration of less restrictive treatment settings and modalities, inpatient hospitalization is the best available means for the treatment of the person. [PL 2005, c. 519, Pt. BBBB, §10 (AMD); PL 2005, c. 519, Pt. BBBB, §20 (AFF).]

F. In each case, the applicant shall submit to the court, at the time of the hearing, testimony, including expert psychiatric testimony, indicating the individual treatment plan to be followed by the psychiatric hospital staff, if the person is committed under this section, and shall bear any expense for witnesses for this purpose. [PL 2007, c. 319, §10 (AMD).]

G. A stenographic or electronic record must be made of the proceedings in all judicial hospitalization hearings.

(1) The record and all notes, exhibits and other evidence are confidential.

(2) The record and all notes, exhibits and other evidence must be retained as part of the District Court records for a period of 2 years from the date of the hearing. [PL 2007, c. 319, §10 (AMD).]

H. The hearing is confidential and a report of the proceedings may not be released to the public or press, except by permission of the person or the person's counsel and with approval of the presiding District Court Judge, except that the court may order a public hearing on the request of the person or the person's counsel. [PL 2007, c. 319, §10 (AMD).]

[PL 2009, c. 651, §22 (AMD).]

6. Court findings. Procedures dealing with the District Court's findings under this section are as follows.

A. The District Court shall so state in the record, if it finds upon completion of the hearing and consideration of the record:

(1) Clear and convincing evidence that the person is mentally ill and that the person's recent actions and behavior demonstrate that the person's illness poses a likelihood of serious harm;

(1-A) That adequate community resources for care and treatment of the person's mental illness are unavailable;

(2) That inpatient hospitalization is the best available means for treatment of the patient; and

(3) That it is satisfied with the individual treatment plan offered by the psychiatric hospital to which the applicant seeks the patient's involuntary commitment. [PL 2009, c. 651, §23 (AMD).]

B. If the District Court makes the findings in paragraph A, subparagraphs (1), (1-A) and (2), but is not satisfied with the individual treatment plan as offered, it may continue the case for not longer than 10 days, pending reconsideration and resubmission of an individual treatment plan by the psychiatric hospital. [PL 2009, c. 651, §23 (AMD).]

C. If the District Court makes the findings in section 3873-A, subsection 1, the court may issue an order under section 3873-A requiring the person to participate in a progressive treatment program. [PL 2009, c. 651, §23 (NEW).]

[PL 2009, c. 651, §23 (AMD).]

7. Commitment. Upon making the findings described in subsection 6, paragraph A, the court may order commitment to a psychiatric hospital for a period not to exceed 4 months in the first instance and not to exceed one year after the first and all subsequent hearings.

A. The court may issue an order of commitment immediately after the completion of the hearing, or it may take the matter under advisement and issue an order within 24 hours of the hearing. [PL 1983, c. 459, §7 (NEW).]

B. If the court does not issue an order of commitment within 24 hours of the completion of the hearing, it shall dismiss the application and order the patient discharged immediately. [PL 1995, c. 496, §6 (AMD).]

[PL 2009, c. 651, §24 (AMD).]

7-A. Involuntary treatment. This subsection governs involuntary treatment.

A. The court may grant a psychiatric hospital power to implement a recommended treatment plan without a person's consent for up to 120 days or until the end of the commitment, whichever is sooner, if upon application the court finds:

- (1) That the person lacks the capacity to make an informed decision regarding treatment;
- (2) That the person is unable or unwilling to comply with recommended treatment;
- (3) That the need for the treatment outweighs the risks and side effects; and
- (4) That the recommended treatment is the least intrusive appropriate treatment option.

Alternatively, the court may appoint a surrogate to make treatment decisions on the person's behalf for the duration of the commitment if the court is satisfied that the surrogate is suitable, willing and reasonably available to act in the person's best interests. [PL 2007, c. 446, §4 (NEW); PL 2007, c. 446, §7 (AFF).]

B. The need for involuntary treatment under paragraph A may be based on findings that include, but are not limited to, the following:

- (1) That a failure to treat the illness is likely to produce lasting or irreparable harm to the person; or
- (2) That without the recommended treatment the person's illness or involuntary commitment may be significantly extended without addressing the symptoms that cause the person to pose a likelihood of serious harm. [PL 2007, c. 446, §4 (NEW); PL 2007, c. 446, §7 (AFF).]

C. The parties may agree to change, terminate or extend the treatment plan during the time period of an order for involuntary treatment. [PL 2009, c. 651, §25 (AMD).]

D. For good cause shown, any party may apply to the court to change or terminate the treatment plan. [PL 2009, c. 651, §26 (AMD).]

[PL 2009, c. 651, §§25, 26 (AMD).]

8. Continued involuntary hospitalization. If the chief administrative officer of the psychiatric hospital to which a person has been committed involuntarily by the District Court recommends that continued involuntary hospitalization is necessary for that person, the chief administrative officer shall notify the commissioner. The commissioner may then, not later than 21 days prior to the expiration of a period of commitment ordered by the court, make application in accordance with this section to the District Court that has territorial jurisdiction over the psychiatric hospital designated for treatment in the application by the commissioner for a hearing to be held under this section. [PL 2007, c. 319, §10 (AMD).]

9. Transportation. Except for transportation expenses paid by the District Court pursuant to subsection 10, a continued involuntary hospitalization hearing that requires transportation of the patient to and from any psychiatric hospital to a court that has committed the person must be provided at the expense of the Department of Health and Human Services. Transportation of an individual to a psychiatric hospital under these circumstances must involve the least restrictive form of transportation available that meets the clinical needs of that individual and be in compliance with departmental regulations. [PL 2007, c. 319, §10 (AMD).]

10. Expenses. With the exception of expenses incurred by the applicant pursuant to subsection 5, paragraph F, the District Court is responsible for any expenses incurred under this section, including witness and notice fees and expenses of transportation for the person but not fees of appointed counsel. [PL 2025, c. 511, §17 (AMD).]

11. Appeals. A person ordered by the District Court to be committed to a psychiatric hospital may appeal from that order to the Superior Court.

- A. The appeal is on questions of law only. [PL 1983, c. 459, §7 (NEW).]
- B. Any findings of fact of the District Court may not be set aside unless clearly erroneous. [PL 1983, c. 459, §7 (NEW).]
- C. The order of the District Court remains in effect pending the appeal. [PL 2007, c. 319, §10 (AMD).]
- D. The District Court Civil Rules and the Maine Rules of Civil Procedure apply to the conduct of the appeals, except as otherwise specified in this subsection. [PL 1983, c. 459, §7 (NEW).]
[PL 2007, c. 319, §10 (AMD).]

12. Transmission of abstract of court ruling to the State Bureau of Identification. Notwithstanding any other provision of this section or section 1207, a court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract of any order for involuntary commitment issued by the court pursuant to this section. The abstract must include:

- A. The name, date of birth and gender of the person who is the subject of the order for involuntary commitment; [PL 2007, c. 670, §19 (NEW).]
- B. The court's ruling that the person has been involuntarily committed; and [PL 2007, c. 670, §19 (NEW).]
- C. A notation that the person has been notified by the court in accordance with subsection 5, paragraph A-1 and subsection 13. [PL 2007, c. 670, §19 (NEW).]

The abstract required in this subsection is confidential and is not a "public record" as defined in Title 1, chapter 13; however, a copy of the abstract may be provided by the State Bureau of Identification to a criminal justice agency for legitimate law enforcement purposes, to the Federal Bureau of Investigation, National Instant Criminal Background Check System or to an issuing authority for the purpose of processing concealed firearm permit applications.

For the purposes of this subsection, "criminal justice agency" means a federal, state, tribal, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.

[PL 2007, c. 670, §19 (NEW).]

13. Firearms possession prohibition notification. A court that orders a person to be committed involuntarily pursuant to this section shall inform the person that possession, ownership or control of a firearm by that person is prohibited pursuant to Title 15, section 393, subsection 1. As used in this subsection, "firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

[PL 2007, c. 670, §20 (NEW).]

SECTION HISTORY

PL 1983, c. 459, §7 (NEW). PL 1995, c. 496, §§3-6 (AMD). PL 1997, c. 422, §§13-19 (AMD). PL 2001, c. 354, §3 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 519, §§BBBB9,10 (AMD). PL 2005, c. 519, §§BBBB20 (AFF). PL 2007, c. 319, §10 (AMD). PL 2007, c. 446, §§2-4 (AMD). PL 2007, c. 446, §7 (AFF). PL 2007, c. 472, §1 (AMD). PL 2007, c. 670, §§18-20 (AMD). PL 2009, c. 281, §3 (AMD). PL 2009, c. 651, §§20-26 (AMD). PL 2015, c. 309, §§6-8 (AMD). PL 2021, c. 389, §3 (AMD). PL 2025, c. 511, §17 (AMD).

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Reference #16
34-B MRSA §3864, sub-§12

§3864. Judicial procedure and commitment

1. Application. An application to the District Court to admit a person to a psychiatric hospital, filed under section 3863, subsection 5-A, must be accompanied by:

A. The emergency application under section 3863, subsection 1; [PL 1983, c. 459, §7 (NEW).]

B. The accompanying certificate of the medical practitioner under section 3863, subsection 2; [PL 2009, c. 651, §20 (AMD).]

C. The certificate of the medical practitioner under section 3863, subsection 7; [PL 2021, c. 389, §3 (AMD).]

D. A written statement, signed by the chief administrative officer of the psychiatric hospital, certifying that a copy of the application and the accompanying documents have been given personally to the patient and that the patient and the patient's guardian or next of kin, if any, have been notified of:

(1) The patient's right to retain an attorney or to have an attorney appointed;

(2) The patient's right to select or to have the patient's attorney select an independent examiner; and

(3) How to contact the District Court; and [PL 2009, c. 651, §20 (AMD).]

E. A copy of the notice and instructions given to the patient. [PL 1997, c. 422, §14 (NEW).]
[PL 2021, c. 389, §3 (AMD).]

1-A. Involuntary treatment. An application under this section may also include a request for an order of involuntary treatment under subsection 7-A.
[PL 2007, c. 446, §2 (NEW); PL 2007, c. 446, §7 (AFF).]

2. Detention pending judicial determination. Notwithstanding any other provisions of this subchapter, a person, with respect to whom an application for the issuance of an order for hospitalization has been filed, may not be released or discharged during the pendency of the proceedings, unless:

A. The District Court orders release or discharge upon the request of the patient or the patient's guardian, parent, spouse or next of kin; [PL 2007, c. 319, §10 (AMD).]

B. The District Court orders release or discharge upon the report of the applicant that the person may be discharged with safety; [PL 1995, c. 496, §3 (AMD).]

C. A court orders release or discharge upon a writ of habeas corpus under section 3804; [PL 2015, c. 309, §6 (AMD).]

D. Upon request of the commissioner, the District Court orders the transfer of a patient in need of more specialized treatment to another psychiatric hospital. In the event of a transfer, the court shall transfer its file to the District Court having territorial jurisdiction over the receiving psychiatric hospital; or [PL 2015, c. 309, §7 (AMD).]

E. The person has capacity to make an informed decision for informal voluntary admission, agrees to informal voluntary admission and the chief administrative officer of the hospital determines that informal voluntary admission is suitable. [PL 2015, c. 309, §8 (NEW).]
[PL 2015, c. 309, §§6-8 (AMD).]

3. Notice of receipt of application. The giving of notice of receipt of application and date of hearing under this section is governed as follows.

A. Upon receipt by the District Court of the application and accompanying documents specified in subsection 1, the court shall cause written notice of the application and date of hearing:

(1) To be mailed within 2 days of filing to the person; and

(2) To be mailed to the person's guardian, if known, and to the person's spouse, parent or one of the person's adult children or, if none of these persons exist or if none of those persons can be located, to one of the person's next of kin or a friend, except that if the chief administrative officer has reason to believe that notice to any of these individuals would pose risk of harm to the person who is the subject of the application, notice to that individual may not be given. [PL 1997, c. 422, §15 (AMD).]

B. A docket entry is sufficient evidence that notice under this subsection has been given. [PL 1983, c. 459, §7 (NEW).]

[PL 1997, c. 422, §15 (AMD).]

4. Examination. Examinations under this section are governed as follows.

A. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1 and at least 3 days after the person who is the subject of the examination was notified by the psychiatric hospital of the proceedings and of that person's right to retain counsel or to select an examiner, the court shall cause the person to be examined by a medical practitioner. If the application includes a request for an order for involuntary treatment under subsection 7-A, the practitioner must be a medical practitioner who is qualified to prescribe medication relevant to the patient's care. If the person under examination or the counsel for that person selects a qualified examiner who is reasonably available, the court shall give preference to choosing that examiner. [PL 2009, c. 651, §21 (AMD).]

B. The examination must be held at a psychiatric hospital or at any other suitable place not likely to have a harmful effect on the mental health of the person. [PL 2009, c. 651, §21 (AMD).]

C. [PL 2007, c. 319, §10 (RP).]

D. [PL 2007, c. 319, §10 (RP).]

E. The examiner shall report to the court on:

(1) Whether the person is a mentally ill person within the meaning of section 3801, subsection 5;

(2) When the establishment of a progressive treatment plan under section 3873-A is at issue, whether a person is suffering from a severe and persistent mental illness within the meaning of section 3801, subsection 8-A;

(3) Whether the person poses a likelihood of serious harm within the meaning of section 3801, subsection 4-A;

(4) When involuntary treatment is at issue, whether the need for such treatment meets the criteria of subsection 7-A, paragraphs A and B;

(5) Whether adequate community resources are available for care and treatment of the person's mental illness; and

(6) Whether the person's clinical needs may be met by an order under section 3873-A to participate in a progressive treatment program. [PL 2009, c. 651, §21 (AMD).]

F. [PL 2007, c. 446, §3 (RP); PL 2007, c. 446, §7 (AFF).]

G. Opinions of the examiner may be based on personal observation or on history and information from other sources considered reliable by the examiner. [PL 2009, c. 651, §21 (NEW).]

[PL 2009, c. 651, §21 (AMD).]

5. Hearing. Hearings under this section are governed as follows.

A. The District Court shall hold a hearing on the application not later than 14 days from the date of the application. The District Court may separate the hearing on commitment from the hearing on involuntary treatment.

(1) For good cause shown, on a motion by any party or by the court on its own motion, the hearing on commitment or on involuntary treatment may be continued for a period not to exceed 21 additional days.

(2) If the hearing on commitment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application and order the person discharged forthwith.

(2-A) If the hearing on involuntary treatment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application for involuntary treatment.

(3) In computing the time periods set forth in this paragraph, the Maine Rules of Civil Procedure apply. [PL 2009, c. 651, §22 (AMD).]

A-1. Prior to the commencement of the hearing, the court shall inform the person that if an order of involuntary commitment is entered, that person is a prohibited person and may not own, possess or have under that person's control a firearm pursuant to Title 15, section 393, subsection 1. [PL 2007, c. 670, §18 (NEW).]

B. The hearing must be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have harmful effect on the mental health of the person. If the setting is outside the psychiatric hospital to which the patient is currently admitted, the Department of Health and Human Services shall bear the responsibility and expense of transporting the patient to and from the hearing. If the patient is to be admitted to a psychiatric hospital following the hearing, then the hospital from which the patient came shall transport the patient to the admitting psychiatric hospital. If the patient is to be released following the hearing, then the hospital from which the patient came shall return the patient to that hospital or, at the patient's request, return the patient to the patient's place of residence. [PL 2007, c. 319, §10 (AMD).]

C. The court shall receive all relevant and material evidence that may be offered in accordance with accepted rules of evidence and accepted judicial dispositions.

(1) The person, the applicant and all other persons to whom notice is required to be sent must be afforded an opportunity to appear at the hearing to testify and to present and cross-examine witnesses.

(2) The court may, in its discretion, receive the testimony of any other person and may subpoena any witness. [PL 2007, c. 319, §10 (AMD).]

D. The person must be afforded an opportunity to be represented by counsel, and, if neither the person nor others provide counsel, the court shall appoint counsel for the person. [PL 2007, c. 319, §10 (AMD).]

E. In addition to proving that the patient is a mentally ill individual, the applicant must show:

(1) By evidence of the patient's recent actions and behavior, that due to the patient's mental illness the patient poses a likelihood of serious harm; and

(2) That, after full consideration of less restrictive treatment settings and modalities, inpatient hospitalization is the best available means for the treatment of the person. [PL 2005, c. 519, Pt. BBBB, §10 (AMD); PL 2005, c. 519, Pt. BBBB, §20 (AFF).]

F. In each case, the applicant shall submit to the court, at the time of the hearing, testimony, including expert psychiatric testimony, indicating the individual treatment plan to be followed by the psychiatric hospital staff, if the person is committed under this section, and shall bear any expense for witnesses for this purpose. [PL 2007, c. 319, §10 (AMD).]

G. A stenographic or electronic record must be made of the proceedings in all judicial hospitalization hearings.

(1) The record and all notes, exhibits and other evidence are confidential.

(2) The record and all notes, exhibits and other evidence must be retained as part of the District Court records for a period of 2 years from the date of the hearing. [PL 2007, c. 319, §10 (AMD).]

H. The hearing is confidential and a report of the proceedings may not be released to the public or press, except by permission of the person or the person's counsel and with approval of the presiding District Court Judge, except that the court may order a public hearing on the request of the person or the person's counsel. [PL 2007, c. 319, §10 (AMD).]

[PL 2009, c. 651, §22 (AMD).]

6. Court findings. Procedures dealing with the District Court's findings under this section are as follows.

A. The District Court shall so state in the record, if it finds upon completion of the hearing and consideration of the record:

(1) Clear and convincing evidence that the person is mentally ill and that the person's recent actions and behavior demonstrate that the person's illness poses a likelihood of serious harm;

(1-A) That adequate community resources for care and treatment of the person's mental illness are unavailable;

(2) That inpatient hospitalization is the best available means for treatment of the patient; and

(3) That it is satisfied with the individual treatment plan offered by the psychiatric hospital to which the applicant seeks the patient's involuntary commitment. [PL 2009, c. 651, §23 (AMD).]

B. If the District Court makes the findings in paragraph A, subparagraphs (1), (1-A) and (2), but is not satisfied with the individual treatment plan as offered, it may continue the case for not longer than 10 days, pending reconsideration and resubmission of an individual treatment plan by the psychiatric hospital. [PL 2009, c. 651, §23 (AMD).]

C. If the District Court makes the findings in section 3873-A, subsection 1, the court may issue an order under section 3873-A requiring the person to participate in a progressive treatment program. [PL 2009, c. 651, §23 (NEW).]

[PL 2009, c. 651, §23 (AMD).]

7. Commitment. Upon making the findings described in subsection 6, paragraph A, the court may order commitment to a psychiatric hospital for a period not to exceed 4 months in the first instance and not to exceed one year after the first and all subsequent hearings.

A. The court may issue an order of commitment immediately after the completion of the hearing, or it may take the matter under advisement and issue an order within 24 hours of the hearing. [PL 1983, c. 459, §7 (NEW).]

B. If the court does not issue an order of commitment within 24 hours of the completion of the hearing, it shall dismiss the application and order the patient discharged immediately. [PL 1995, c. 496, §6 (AMD).]

[PL 2009, c. 651, §24 (AMD).]

7-A. Involuntary treatment. This subsection governs involuntary treatment.

A. The court may grant a psychiatric hospital power to implement a recommended treatment plan without a person's consent for up to 120 days or until the end of the commitment, whichever is sooner, if upon application the court finds:

- (1) That the person lacks the capacity to make an informed decision regarding treatment;
- (2) That the person is unable or unwilling to comply with recommended treatment;
- (3) That the need for the treatment outweighs the risks and side effects; and
- (4) That the recommended treatment is the least intrusive appropriate treatment option.

Alternatively, the court may appoint a surrogate to make treatment decisions on the person's behalf for the duration of the commitment if the court is satisfied that the surrogate is suitable, willing and reasonably available to act in the person's best interests. [PL 2007, c. 446, §4 (NEW); PL 2007, c. 446, §7 (AFF).]

B. The need for involuntary treatment under paragraph A may be based on findings that include, but are not limited to, the following:

- (1) That a failure to treat the illness is likely to produce lasting or irreparable harm to the person; or
- (2) That without the recommended treatment the person's illness or involuntary commitment may be significantly extended without addressing the symptoms that cause the person to pose a likelihood of serious harm. [PL 2007, c. 446, §4 (NEW); PL 2007, c. 446, §7 (AFF).]

C. The parties may agree to change, terminate or extend the treatment plan during the time period of an order for involuntary treatment. [PL 2009, c. 651, §25 (AMD).]

D. For good cause shown, any party may apply to the court to change or terminate the treatment plan. [PL 2009, c. 651, §26 (AMD).]

[PL 2009, c. 651, §§25, 26 (AMD).]

8. Continued involuntary hospitalization. If the chief administrative officer of the psychiatric hospital to which a person has been committed involuntarily by the District Court recommends that continued involuntary hospitalization is necessary for that person, the chief administrative officer shall notify the commissioner. The commissioner may then, not later than 21 days prior to the expiration of a period of commitment ordered by the court, make application in accordance with this section to the District Court that has territorial jurisdiction over the psychiatric hospital designated for treatment in the application by the commissioner for a hearing to be held under this section. [PL 2007, c. 319, §10 (AMD).]

9. Transportation. Except for transportation expenses paid by the District Court pursuant to subsection 10, a continued involuntary hospitalization hearing that requires transportation of the patient to and from any psychiatric hospital to a court that has committed the person must be provided at the expense of the Department of Health and Human Services. Transportation of an individual to a psychiatric hospital under these circumstances must involve the least restrictive form of transportation available that meets the clinical needs of that individual and be in compliance with departmental regulations. [PL 2007, c. 319, §10 (AMD).]

10. Expenses. With the exception of expenses incurred by the applicant pursuant to subsection 5, paragraph F, the District Court is responsible for any expenses incurred under this section, including witness and notice fees and expenses of transportation for the person but not fees of appointed counsel. [PL 2025, c. 511, §17 (AMD).]

11. Appeals. A person ordered by the District Court to be committed to a psychiatric hospital may appeal from that order to the Superior Court.

A. The appeal is on questions of law only. [PL 1983, c. 459, §7 (NEW).]

B. Any findings of fact of the District Court may not be set aside unless clearly erroneous. [PL 1983, c. 459, §7 (NEW).]

C. The order of the District Court remains in effect pending the appeal. [PL 2007, c. 319, §10 (AMD).]

D. The District Court Civil Rules and the Maine Rules of Civil Procedure apply to the conduct of the appeals, except as otherwise specified in this subsection. [PL 1983, c. 459, §7 (NEW).]
[PL 2007, c. 319, §10 (AMD).]

12. Transmission of abstract of court ruling to the State Bureau of Identification. Notwithstanding any other provision of this section or section 1207, a court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract of any order for involuntary commitment issued by the court pursuant to this section. The abstract must include:

A. The name, date of birth and gender of the person who is the subject of the order for involuntary commitment; [PL 2007, c. 670, §19 (NEW).]

B. The court's ruling that the person has been involuntarily committed; and [PL 2007, c. 670, §19 (NEW).]

C. A notation that the person has been notified by the court in accordance with subsection 5, paragraph A-1 and subsection 13. [PL 2007, c. 670, §19 (NEW).]

The abstract required in this subsection is confidential and is not a "public record" as defined in Title 1, chapter 13; however, a copy of the abstract may be provided by the State Bureau of Identification to a criminal justice agency for legitimate law enforcement purposes, to the Federal Bureau of Investigation, National Instant Criminal Background Check System or to an issuing authority for the purpose of processing concealed firearm permit applications.

For the purposes of this subsection, "criminal justice agency" means a federal, state, tribal, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.

[PL 2007, c. 670, §19 (NEW).]

13. Firearms possession prohibition notification. A court that orders a person to be committed involuntarily pursuant to this section shall inform the person that possession, ownership or control of a firearm by that person is prohibited pursuant to Title 15, section 393, subsection 1. As used in this subsection, "firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.
[PL 2007, c. 670, §20 (NEW).]

SECTION HISTORY

PL 1983, c. 459, §7 (NEW). PL 1995, c. 496, §§3-6 (AMD). PL 1997, c. 422, §§13-19 (AMD). PL 2001, c. 354, §3 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 519, §§BBBB9,10 (AMD). PL 2005, c. 519, §BBBB20 (AFF). PL 2007, c. 319, §10 (AMD). PL 2007, c. 446, §§2-4 (AMD). PL 2007, c. 446, §7 (AFF). PL 2007, c. 472, §1 (AMD). PL 2007, c. 670, §§18-20 (AMD). PL 2009, c. 281, §3 (AMD). PL 2009, c. 651, §§20-26 (AMD). PL 2015, c. 309, §§6-8 (AMD). PL 2021, c. 389, §3 (AMD). PL 2025, c. 511, §17 (AMD).

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STATUTE: 34-B MRSA §3864, sub-§12

ENTITY: State Bureau of Identification, Department of Public Safety

CONTACT PERSON: Rebecca Graham

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY
MAINE STATE POLICE
OFFICE OF THE DIRECTOR OF POLICY

To: Sen. Anne Carney, Members of the Right to Know Advisory Committee
Fr: Rebecca J. Graham, Director of Policy, FOAA & Legislative Affairs
Re: Right to Know Advisory Committee Department Questionnaire
Date: October 6, 2026

Please accept this combined response for our agency to review and report back the application of public records exceptions in the following sections of law: 34-A MRSA §11221, sub-§9-A, 34-A MRSA §11221, sub-§13, 34-A MRSA §11281, sub-§9, 34-A MRSA §11281, sub-§12, 34-B MRSA §3864, sub-§12.

The Department recommends retaining the existing exceptions contained in 34-A M.R.S. §11221(9-A) and (13), 34-A M.R.S. §11281(9) and (12), and 34-B M.R.S. §3864(12). Although these provisions address different records and operate in somewhat different ways, each reflects an important legislative determination that transparency in government must be balanced against privacy, public safety, the integrity of sensitive information systems, and the consequences of unrestricted dissemination of personally identifiable information.

The exceptions contained in 34-A M.R.S. §§11221 and 11281 relate to information maintained as part of Maine's sex offender registry. Sections 11221(9-A) and 11281(9) establish the basic confidentiality of registry information created, collected, or maintained by the State Bureau of Identification while expressly preserving public access to the categories of information the Legislature has determined should be publicly available. Sections 11221(13) and 11281(12) serve a related but distinct purpose by restricting the electronic dissemination of registrant information outside the specifically authorized means of public access. Thus, these statutes do not remove sex offender information from public scrutiny. Rather, they establish the manner and extent to which sensitive information may be publicly disseminated.

That distinction has become increasingly important as the nature of public records requests has changed. The Department has experienced an approximately 500 percent increase in targeted requests seeking information about particular individuals appearing in public safety records. These requests are materially

different from traditional requests seeking to provide transparency into government policy, expenditure, investigation practice, or other governmental activity. Maine's Freedom of Access Act expressly identifies openness in the conduct of the people's business and public inspection of the records of governmental actions as its central purposes. The State's own FOAA guidance similarly describes the law as providing broad access to government records while protecting legitimate governmental interests and individual privacy.

Increasingly, however, public records laws are also being used to aggregate information about individual citizens across multiple government databases. Artificial intelligence has significantly reduced the effort necessary to formulate large numbers of highly particularized requests and identify potentially responsive data fields. The corresponding work has not been reduced for the agency receiving those requests. A request generated or refined in seconds may require multiple days of employee time to review to locate responsive records, determine which statutory confidentiality provisions apply, identify information concerning third parties, perform required redactions, and conduct the legal review necessary to ensure that protected information is not inadvertently disclosed. This is placing a significant burden on all agencies and costing hundreds of hours of staff time to address.

The Department is also receiving requests whose apparent purpose is large-scale data acquisition rather than examination of governmental conduct. Public safety information has commercial value, and audio and visual material in law enforcement records can be collected, combined with information from other sources, repackaged, and sold or commercialized through a platform where sensational content increases content revenue. Once information is released electronically, the practical ability of the State to control subsequent aggregation, redistribution, or misuse disappears.

The electronic-distribution restrictions in §§11221(13) and 11281(12) are particularly significant in that environment. They allow the agency to determine affirmatively what registry information should be broadly available electronically rather than permitting the entirety of an underlying government database to become a source for unrestricted secondary data mining.

The Department does not view these developments as a reason to diminish meaningful public access to information about government. They do, however, reinforce the continuing need for carefully drawn statutory exceptions that distinguish between transparency concerning governmental conduct and unrestricted dissemination of sensitive information about identifiable individuals. Removal of these exceptions would not simply increase the public's ability to evaluate agency operations; or improve safety, it could materially alter the amount, format, and scalability of personal information available for aggregation.

Section 3864(12) presents a somewhat different issue. That statute requires a court issuing an involuntary commitment order to transmit an abstract of the order to the State Bureau of Identification. The statute requires identifying information concerning the individual, as well as the court's ruling and the required notification concerning firearms restrictions. The abstract is expressly confidential and is not a public record, although SBI may provide it to criminal justice agencies for legitimate law-enforcement purposes; the FBI's National Instant Criminal Background Check System, and concealed-firearm permit issuing authorities for the statutorily specified purposes.

The confidentiality exception in §3864(12) remains important. An involuntary commitment record involves extraordinarily sensitive personal information. Its legitimate use is narrowly defined: principally to ensure that legally operative firearms prohibitions can be identified and enforced. Making these abstracts generally available under FOAA would expose sensitive information about individuals without materially advancing public understanding of how government performs its functions.

There is, however, a legitimate operational concern with the identifying information accompanying these records that should be addressed independently of the public records exception. Section 3864(12) currently requires the abstract to include the person's name, date of birth, and gender. In practical application, the available identifying information has not always been sufficient to distinguish conclusively between individuals with the same or similar names and dates of birth, particularly when a person is attempting to purchase a firearm outside Maine. This can result in an individual who is not the subject of the Maine commitment order being initially flagged as potentially prohibited and having to undertake additional steps so that identity can be verified before the transaction proceeds. While infrequent, the agency has been notified of such issues on enough occasions to be concerning.

That is an important problem, but it is fundamentally a record-identification problem rather than a public-access problem. Eliminating or weakening the confidentiality exception would not resolve it. A more direct solution would be to improve the identifying information transmitted by the court so SBI and the relevant federal system have an additional reliable identifier with which to distinguish individuals. The objective should be to improve identity matching while continuing to limit collection and disclosure to information reasonably necessary for the statutory purpose.

This approach separates two issues that should not be conflated. The first is whether confidential involuntary-commitment information should become publicly available. The Department believes the existing exception remains necessary and

appropriately protects highly sensitive information. The second is whether the information supplied through the confidential governmental process is sufficiently precise to avoid erroneous identity matches. That issue deserves attention, but the appropriate response is to improve the quality of the identifying information transmitted rather than remove the confidentiality protection surrounding the record.

More broadly, these exceptions illustrate why periodic review of public records exceptions should consider not only whether the original justification for confidentiality continues to exist, but also how modern technology has changed the consequences of disclosure. The practical difference between allowing a member of the public to inspect an identified government record and supplying large quantities of information capable of instantaneous aggregation, profiling, redistribution, and commercial resale is substantial.

The Department strongly supports transparency concerning its operations, decisions, policies, and exercise of governmental authority. At the same time, transparency should not inadvertently convert public safety information systems into repositories from which comprehensive dossiers about individual citizens can be assembled. The significant increase in individualized requests, the ability of artificial intelligence to generate highly targeted requests, and the growing commercial interest in acquiring and repackaging government data make carefully tailored confidentiality and electronic-dissemination exceptions more important today, not less. The staffing burden these requests place on all public agencies should be examined in greater detail as well.

For these reasons, the Department recommends maintaining the exceptions in 34-A M.R.S. §11221(9-A) and (13), 34-A M.R.S. §11281(9) and (12), and 34-B M.R.S. §3864(12), while separately working with the Judicial Branch and other appropriate partners to improve the identifying information associated with §3864(12) transmissions and reduce the potential for erroneous identity matches.

Reference #17
34-B MRSA §5005-A, sub-§5

§5005-A. Advocacy agency

1. Agency. The department shall contract with the agency designated pursuant to Title 5, section 19502, referred to in this section as "the agency," to provide the services described in subsection 2 to individuals with intellectual disabilities or autism. [PL 2011, c. 657, Pt. EE, §5 (NEW).]

2. Duties. The department shall contract with the agency to perform the following duties statewide in at least 5 geographically dispersed locations.

A. The agency shall receive complaints made by or on behalf of individuals with intellectual disabilities or autism and represent their interests in any matter pertaining to their rights and dignity. [PL 2013, c. 310, §2 (AMD).]

B. The agency shall investigate the claims, grievances and allegations of violations of the rights of individuals with intellectual disabilities or autism. [PL 2013, c. 310, §2 (AMD).]

C. The agency may pursue legal, administrative and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with intellectual disabilities or autism who are or may be eligible for services administered, licensed or funded by the department, except that the agency may refuse to take action on any complaint that it considers to be trivial, to be moot or to lack merit or for which there is clearly another remedy available. [PL 2013, c. 310, §2 (AMD).]

D. [PL 2013, c. 310, §2 (RP).]

E. The agency may refer individuals with intellectual disabilities or autism to other agencies or entities and collaborate with those agencies or entities for the purpose of advocating for the rights and dignity of those individuals. [PL 2013, c. 310, §2 (AMD).]

F. The agency shall act as an information source regarding the rights of all individuals with intellectual disabilities or autism, keeping itself informed about all laws, administrative rules and institutional and other policies relating to the rights and dignity of those individuals and about relevant legal decisions and other developments related to the fields of mental health, intellectual disabilities and autism, both in this State and in other parts of the country. [PL 2013, c. 310, §2 (AMD).]

G. The agency may make and publish reports necessary to the performance of the duties described in this section. The agency may report its findings to groups outside the department, such as legislative bodies, advisory committees, commissions, law enforcement agencies and the press. At least annually, the agency shall report both in person and in writing to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the department regarding the performance of the duties described in this section. [PL 2013, c. 310, §2 (AMD).]

H. The agency may monitor the delivery of services, supports and other assistance or residential services or treatment provided to persons with intellectual disabilities or autism for the purpose of ensuring that services, supports and assistance meet the needs of those persons and are delivered in conformity with laws, regulations, rules and other standards regarding quality of care. [PL 2013, c. 310, §2 (NEW).]

[PL 2013, c. 310, §2 (AMD).]

3. Participate in personal planning. The agency may participate in personal planning when the agency has concerns regarding the rights or dignity of a person with intellectual disabilities or autism. A person has the right to refuse such participation. [PL 2011, c. 657, Pt. EE, §5 (NEW).]

4. Access to files and records. The agency has access, limited only by the Civil Service Law, to the files, records and personnel of any provider of services, including the files and records of any person

with an intellectual disability or autism held by any provider of service, administered, licensed or funded by the department and to all reports and related documents submitted pursuant to section 5604-A.

[RR 2025, c. 2, Pt. A, §151 (COR).]

4-A. Access to individuals. The agency has access to individuals pursuant to Title 5, section 19506.

[PL 2013, c. 310, §4 (NEW).]

5. Confidentiality. The following provisions govern confidentiality.

A. Any request by or on behalf of an individual with intellectual disabilities or autism for action by the agency and all written records or accounts related to the request are confidential as to the identity of the individual. [PL 2011, c. 657, Pt. EE, §5 (NEW).]

B. The records and accounts under paragraph A may be released only as provided by law. [PL 2011, c. 657, Pt. EE, §5 (NEW).]

C. Records maintained by the agency are the sole property of the individual with intellectual disabilities or autism to whom the records pertain and the agency shall protect the records from loss, damage, tampering or use by unauthorized individuals. The agency shall keep the records confidential and may not release them without written consent from the individual with intellectual disabilities or autism or the individual's guardian. [PL 2013, c. 310, §5 (NEW).]

[PL 2013, c. 310, §5 (AMD).]

SECTION HISTORY

PL 2011, c. 657, Pt. EE, §5 (NEW). PL 2013, c. 310, §§2-5 (AMD). RR 2025, c. 2, Pt. A, §151 (COR).

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STATUTE: 34-B MRSA §5005-A, sub-§5

ENTITY: Disability Rights Maine

CONTACT PERSON: Lauren Wille

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

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4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Reference #18
34-B MRSA §5605, sub-§15

§5605. Rights and basic protections of a person with an intellectual disability, autism or an acquired brain injury

A person with an intellectual disability or autism is entitled to the following rights and basic protections. A person with an acquired brain injury is entitled to the rights and basic protections outlined in subsections 1 to 11. [PL 2021, c. 284, Pt. A, §11 (AMD).]

1. Humane treatment. A person with an intellectual disability, autism or an acquired brain injury is entitled to dignity; privacy and humane treatment. [PL 2021, c. 284, Pt. A, §12 (AMD).]

2. Practice of religion. A person with an intellectual disability, autism or an acquired brain injury is entitled to religious freedom and practice without any restriction or forced infringement on that person's right to religious preference and practice. [PL 2021, c. 284, Pt. A, §13 (AMD).]

3. Communications. A person with an intellectual disability, autism or an acquired brain injury is entitled to private communications.

A. A person with an intellectual disability, autism or an acquired brain injury is entitled to receive, send and mail sealed, unopened correspondence. A person who is a provider may not delay, hold or censor any incoming or outgoing correspondence of any person with an intellectual disability, autism or an acquired brain injury, nor may any such correspondence be opened without the consent of the person or the person's legal guardian. [PL 2021, c. 284, Pt. A, §14 (AMD).]

B. A person with an intellectual disability, autism or an acquired brain injury is entitled to reasonable opportunities for telephone and Internet communication. [PL 2021, c. 284, Pt. A, §14 (AMD).]

C. A person with an intellectual disability, autism or an acquired brain injury is entitled to an unrestricted right to visitations during reasonable hours unless this right has been restricted pursuant to rules adopted pursuant to section 5604. [PL 2021, c. 284, Pt. A, §14 (AMD).]
[PL 2021, c. 284, Pt. A, §14 (AMD).]

4. Work. A person with an intellectual disability, autism or an acquired brain injury engaged in work programs that require compliance with state and federal wage and hour laws is entitled to fair compensation for labor in compliance with regulations of the United States Department of Labor. [PL 2021, c. 284, Pt. A, §15 (AMD).]

5. Vote. A person with an intellectual disability, autism or an acquired brain injury may not be denied the right to vote. [PL 2021, c. 284, Pt. A, §16 (AMD).]

6. Personal property. A person with an intellectual disability, autism or an acquired brain injury is entitled to the possession and use of that person's own clothing, personal effects and money, except when temporary custody of clothing or personal effects by a provider is necessary to protect the person or others from imminent injury or unless this right has been restricted pursuant to rules adopted pursuant to section 5604. [PL 2021, c. 284, Pt. A, §17 (AMD).]

7. Nutrition. A person with an intellectual disability, autism or an acquired brain injury is entitled to nutritious food in adequate quantities and meals may not be withheld for disciplinary reasons. [PL 2021, c. 284, Pt. A, §18 (AMD).]

8. Medical care. A person with an intellectual disability, autism or an acquired brain injury is entitled to receive prompt and appropriate medical and dental treatment and care for physical and mental ailments and for the prevention of any illness or disability, and medical treatment must be

consistent with the accepted standards of medical practice in the community, unless the religion of the person with an intellectual disability, autism or an acquired brain injury so prohibits.

A. Medication may be administered only at the written order of a physician. [PL 1983, c. 459, §7 (NEW).]

B. Medication may not be used as punishment, for the convenience of staff, as a substitute for a habilitation plan or in unnecessary or excessive quantities. [PL 1983, c. 459, §7 (NEW).]

C. Daily notation of medication received by each person with an intellectual disability, autism or an acquired brain injury must be kept in the records of the person with an intellectual disability, autism or an acquired brain injury. [PL 2021, c. 284, Pt. A, §19 (AMD).]

D. Periodically, but no less frequently than every 6 months, the drug regimen of each person with an intellectual disability, autism or an acquired brain injury must be reviewed by a physician or other appropriate monitoring body, consistent with appropriate standards of medical practice. [PL 2021, c. 284, Pt. A, §19 (AMD).]

E. All prescriptions must have a termination date. [PL 1993, c. 326, §9 (AMD).]

F. [PL 2011, c. 186, Pt. A, §24 (RP).]

G. Prior to instituting a plan of experimental medical treatment or carrying out any surgical procedure, express and informed consent must be obtained from the person with an intellectual disability, autism or an acquired brain injury, unless the person has been found to be legally incompetent, in which case the person's guardian may consent.

(1) Before making a treatment or surgical decision, the person must be given information, including, but not limited to, the nature and consequences of the procedures, the risks, benefits and purposes of the procedures and the availability of alternate procedures.

(2) The person or, if legally incompetent, that person's guardian may withdraw express and informed consent at any time, with or without cause, before treatment or surgery. [PL 2021, c. 284, Pt. A, §19 (AMD).]

H. Notwithstanding the absence of express and informed consent, emergency medical care or treatment may be provided to any person with an intellectual disability, autism or an acquired brain injury who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency medical care or treatment would endanger the health of the person. [PL 2021, c. 284, Pt. A, §19 (AMD).]

I. Notwithstanding the absence of express and informed consent, emergency surgical procedures may be provided to any person with an intellectual disability, autism or an acquired brain injury who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency surgery would substantially endanger the health of the person. [PL 2021, c. 284, Pt. A, §19 (AMD).]

[PL 2021, c. 284, Pt. A, §19 (AMD).]

9. Sterilization. A person with an intellectual disability, autism or an acquired brain injury may not be sterilized, except in accordance with chapter 7.

[PL 2021, c. 284, Pt. A, §20 (AMD).]

10. Social activity. A person with an intellectual disability, autism or an acquired brain injury is entitled to opportunities for behavioral and leisure time activities that include social interaction in the community, as set out in section 5610. This right may be waived or restricted only under the rules adopted pursuant to section 5604 or pursuant to a treatment plan approved pursuant to section 5603, subsection 1.

[PL 2021, c. 284, Pt. A, §21 (AMD).]

11. Physical exercise. A person with an intellectual disability, autism or an acquired brain injury is entitled to opportunities for appropriate physical exercise, including the use of available indoor and outdoor facilities and equipment.

[PL 2021, c. 284, Pt. A, §22 (AMD).]

12. Discipline. Discipline of persons with intellectual disabilities or autism is governed as follows.

A. [PL 2011, c. 186, Pt. A, §26 (RP).]

B. Corporal punishment or any form of inhumane discipline is not permitted. [PL 1983, c. 459, §7 (NEW).]

C. Seclusion as a form of discipline is not permitted. [PL 2011, c. 186, Pt. A, §26 (AMD).]

D. [PL 1993, c. 326, §9 (RP).]

E. [PL 2025, c. 276, §1 (RP); PL 2025, c. 276, §10 (AFF).]

[PL 2011, c. 542, Pt. A, §129 (AMD); PL 2025, c. 276, §1 (AMD); PL 2025, c. 276, §10 (AFF).]

13. Behavioral health support, modification and management for children. Behavior modification and behavior management of and supports for a person who has not attained 18 years of age with an intellectual disability or autism and who is not a patient in a psychiatric unit of an acute hospital or a psychiatric hospital as defined in section 3801, subsection 7-B are governed as follows.

A. A person who has not attained 18 years of age with an intellectual disability or autism may not be subjected to a behavior modification or behavior management program to eliminate dangerous or maladaptive behavior without first being assessed by a physician to determine if the proposed program is medically contraindicated and that the dangerous or maladaptive behavior could not be better treated medically. [PL 2025, c. 276, §2 (AMD); PL 2025, c. 276, §10 (AFF).]

A-1. Support programs may contain both behavior modification and behavior management components. [PL 2011, c. 186, Pt. A, §27 (AMD).]

A-2. The following practices are prohibited as elements of behavior modification or behavior management programs:

- (1) Seclusion;
- (2) Corporal punishment;
- (3) Actions or language intended to humble, dehumanize or degrade the person;
- (4) Restraints that do not conform to rules adopted pursuant to this section;
- (5) Totally enclosed cribs or beds; and
- (6) Painful stimuli. [PL 2011, c. 186, Pt. A, §27 (NEW).]

B. Behavior modification and behavior management programs may be used only to correct behavior more harmful to the person than the program and only:

- (1) On the recommendation of the person's personal planning team; and
- (3) With the approval, following a case-by-case review, of a review team composed of a representative from the advocacy agency designated pursuant to Title 5, section 19502, a team leader of the department's children's services division and the children's services medical director or the director's designee. The advocacy agency representative serves as a nonvoting member of the review team and shall be present to advocate on behalf of the person. The department shall provide sufficient advance notice of all scheduled review team meetings to the advocacy agency and provide the advocacy agency with any plans for which approval is sought along with any supporting documentation. Until rules are adopted by the department to govern behavioral treatment reviews for children, the team may not approve techniques any

more aversive or intrusive than are permitted in rules adopted by the United States Secretary of Health and Human Services regarding treatment of children and youth in nonmedical community-based facilities funded under the Medicaid program. [PL 2025, c. 276, §2 (AMD); PL 2025, c. 276, §10 (AFF).]

C. [PL 2011, c. 186, Pt. A, §27 (RP).]
[PL 2025, c. 276, §2 (AMD); PL 2025, c. 276, §10 (AFF).]

13-A. Behavioral health support, modification and management for adults. Behavioral supports for an adult with an intellectual disability or autism who is not a patient in a psychiatric unit of an acute hospital or a psychiatric hospital as defined in section 3801, subsection 7-B are governed as follows.

A. An adult with an intellectual disability or autism may have a positive behavioral health support plan if recommended by the individual's person-centered support team or requested by the adult. If the positive support plan is to address dangerous or maladaptive behavior, it must be preceded by an assessment by a medical practitioner, as defined in section 3801, subsection 4-B, to rule out medical reasons for the behavior. [PL 2025, c. 276, §3 (NEW); PL 2025, c. 276, §10 (AFF).]

B. A positive behavioral health support plan designed to support the adult to participate meaningfully in that adult's community life cannot include a waiver of any rights provided in this section and may be implemented upon recommendation of the adult's person-centered planning team. [PL 2025, c. 276, §3 (NEW); PL 2025, c. 276, §10 (AFF).]

C. A modifying behavioral health support plan designed to modify or redirect the adult's behavior may include a waiver of rights with informed consent of the adult subject to the plan and must be approved by the department for approval prior to implementation. The plan must be reviewed and approved by a licensed clinical social worker or psychologist who is employed by or under contract with the department. [PL 2025, c. 276, §3 (NEW); PL 2025, c. 276, §10 (AFF).]

D. The following practices are prohibited as elements of positive behavioral health support plans and modifying behavioral health support plans for adults:

- (1) Seclusion;
- (2) Corporal punishment;
- (3) Actions or language intended to humble, dehumanize or degrade the person;
- (4) Planned use of restraints;
- (5) Totally enclosed cribs or beds; and
- (6) Painful stimuli. [PL 2025, c. 276, §3 (NEW); PL 2025, c. 276, §10 (AFF).]

The department shall convene a support and safety committee, at least quarterly, to review data on the number and types of plans implemented for adults under this subsection. The department shall provide to the committee deidentified copies of positive behavioral health support plans for all individuals transitioning from a modifying behavioral health support plan to a positive behavioral health support plan. The committee must include, at a minimum, a self-advocate, a family member of the individual receiving services, a representative of the advocacy agency designated pursuant to Title 5, section 19502, a member of the Maine Developmental Services Oversight and Advisory Board established pursuant to Title 5, section 12004-J, subsection 15 and the licensed clinical social worker or psychologist employed by or under contract with the department under paragraph C.

For the purposes of this subsection, "adult" means a person 18 years of age or older; "modifying behavioral health support plan" means a support plan that outlines strategies to encourage positive behavior and address challenges, incorporating both proactive and corrective interventions; and "positive behavioral health support plan" means a behavioral health support plan that emphasizes using

positive reinforcement and proactive strategies to address behaviors that negatively impact the health, safety and well-being of the person.

For the purposes of this subsection, "restraint" does not include blocking or physical redirection. Blocking is a momentary deflection of a person's movement without holding when that movement would be destructive or harmful. Physical redirection is steering a person without holding or coercion. [PL 2025, c. 276, §3 (NEW); PL 2025, c. 276, §10 (AFF).]

13-B. Safety devices for adults. The use of a safety device for an adult with an intellectual disability or autism is governed as follows.

A. For the purposes of this subsection, "safety device" means an implement, garment, gate, barrier, lock or locking apparatus, video monitoring or video recording device, helmet, mask, glove, strap, belt or protective glove, the effect of which is to reduce or inhibit the adult's movement with the sole purpose of maintaining the safety of the adult. "Safety device" does not include anything used as a means of behavior modification. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF).]

B. The use of a safety device must be pursuant to a written recommendation from a licensed physician, certified nurse practitioner or licensed physician associate. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF); PL 2025, c. 316, §3 (REV).]

C. The use of a safety device must be approved by the adult's personal planning team, and that approval must be recorded in a document that is part of the adult's planning record. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF).]

D. The adult or the adult's guardian must consent to the use of the safety device. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF).]

E. When a safety device is in use and that safety device may affect other adults residing in the home or participating in the program by restricting their rights, accommodations must be identified and implemented to minimize the effect on the other adults. The personal plan of each adult affected by the use of the safety device must indicate how that adult will be supported to minimize the negative effect of the restriction. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF).]

F. When a video monitoring device or video recording device is in use and other adults residing in the home or participating in the program may trigger or appear on the video monitoring device or video recording device, the consent of that adult must be obtained. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF).]

[PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF); PL 2025, c. 316, §3 (REV).]

14. Physical restraints.

[PL 2007, c. 573, §1 (RP).]

14-A. Restraints for children. A person who has not attained 18 years of age with an intellectual disability or autism is entitled to be free from restraint unless:

A. The restraint is a short-term step to protect the person from imminent injury to that person or others; or [PL 2011, c. 186, Pt. A, §28 (AMD).]

B. The restraint has been approved as a behavior management program in accordance with this section. [PL 2011, c. 186, Pt. A, §28 (AMD).]

A restraint may not be used as punishment, for the convenience of the staff or as a substitute for habilitative services. A restraint may impose only the least possible restriction consistent with its purpose and must be removed as soon as the threat of imminent injury ends. A restraint may not cause physical injury to the person receiving services and must be designed to allow the greatest possible comfort and safety.

Daily records of the use of restraints identified in paragraph A must be kept, which may be accomplished by meeting reportable event requirements.

Daily records of the use of restraints identified in paragraph B must be kept, and a summary of the daily records pertaining to the person must be made available for review by the person's planning team, as defined in section 5461, subsection 8-C, on a schedule determined by the team. The review by the personal planning team may occur no less frequently than quarterly. The summary of the daily records must state the type of restraint used, the duration of the use and the reasons for the use. A monthly summary of all daily records pertaining to all persons must be relayed to the advocacy agency designated pursuant to Title 5, section 19502.

[PL 2025, c. 276, §5 (AMD); PL 2025, c. 276, §10 (AFF).]

14-B. Mechanical supports.

[PL 2011, c. 186, Pt. A, §29 (RP).]

14-C. Safety devices.

[PL 2011, c. 186, Pt. A, §30 (RP).]

14-D. Reimbursement provided. Notwithstanding any other provision of law, the department shall provide reimbursement within available resources for durable medical equipment that provides a safe sleeping environment for individuals under 16 years of age if:

A. The durable medical equipment is necessary to correct or ameliorate a behavioral health condition; [PL 2009, c. 100, §1 (NEW).]

B. The durable medical equipment is the least restrictive alternative for the treatment of the behavioral health condition; [PL 2009, c. 100, §1 (NEW).]

C. The durable medical equipment is approved on a case-by-case basis by a review team composed of the same representatives as the team conducting children's behavioral treatment reviews under subsection 13, paragraph B, subparagraph (3); and [PL 2009, c. 100, §1 (NEW).]

D. The department determines that the durable medical equipment is cost-effective in comparison to the provision of other covered services or equipment that can sufficiently correct or ameliorate the behavioral health condition. [PL 2009, c. 100, §1 (NEW).]

The department may adopt rules as necessary to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2009, c. 100, §1 (NEW).]

14-E. Restraints for adults. An adult with an intellectual disability or autism is entitled to be free from restraint unless the restraint is an emergency short-term step to protect the adult from imminent injury to that adult or others. Each use of restraint must be documented in accordance with the department's reportable event requirements. For the purposes of this subsection, "restraint" does not include blocking or physical redirection. Blocking is a momentary deflection of a person's movement without holding when that movement would be destructive or harmful. Physical redirection is steering a person without holding or coercion.

[PL 2025, c. 276, §6 (NEW); PL 2025, c. 276, §10 (AFF).]

15. Records. All records of persons receiving services must remain confidential as provided in section 1207.

A. The person with an intellectual disability or autism or, if the person is incompetent, a parent or guardian is entitled to have access to the records upon request. [PL 2011, c. 542, Pt. A, §129 (AMD).]

B. The commissioner is entitled to have access to the records of a provider if necessary to carry out the statutory functions of the commissioner's office. [PL 2011, c. 186, Pt. A, §31 (AMD).]
[PL 2011, c. 542, Pt. A, §129 (AMD).]

16. Therapeutic devices or interventions. Therapeutic devices or interventions must be prescriptively designed by a qualified professional and applied with concern for principles of good body alignment and circulation and allowance for change of position. The department may adopt rules concerning the use of therapeutic devices or interventions. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2011, c. 186, Pt. A, §32 (NEW).]

17. Safety devices and practices. A safety device or practice must be prescribed by a physician. A safety device must be designed and applied with concern for principles of good body alignment and circulation and allowance for change of position. The department may adopt rules concerning the use and approval of safety devices or practices. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2011, c. 186, Pt. A, §33 (NEW).]

The department may adopt rules as necessary to implement this section. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2011, c. 186, Pt. A, §34 (NEW).]

SECTION HISTORY

PL 1983, c. 459, §7 (NEW). PL 1987, c. 769, §A129 (AMD). PL 1993, c. 326, §9 (AMD). PL 2001, c. 245, §§1-4 (AMD). PL 2003, c. 368, §§1,2 (AMD). PL 2003, c. 564, §§1-3 (AMD). PL 2007, c. 356, §25 (AMD). PL 2007, c. 356, §31 (AFF). PL 2007, c. 573, §§1-4 (AMD). PL 2007, c. 695, Pt. D, §3 (AFF). PL 2009, c. 100, §1 (AMD). PL 2011, c. 186, Pt. A, §§18-34 (AMD). PL 2011, c. 542, Pt. A, §129 (AMD). PL 2011, c. 657, Pt. EE, §§9, 10 (AMD). PL 2013, c. 310, §7 (AMD). PL 2013, c. 500, §1 (AMD). PL 2021, c. 284, Pt. A, §§10-22 (AMD). PL 2025, c. 276, §§1-6 (AMD). PL 2025, c. 276, §10 (AFF). PL 2025, c. 316, §3 (REV).

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STATUTE: 34-B MRSA §5605, sub-§15

AGENCY: Department of Health and Human Services

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Reference #19
34-B MRSA §7014, sub-§1

STATUTE: 34-B MRSA §7014, sub-§1

AGENCY: Judicial Branch

CONTACT PERSON: Julia Finn

RETURN BY: October 23, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

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34-B MRS §7014(1) makes confidential hearings and records of proceedings in cases arising under the Due Process in Sterilization Act of 1982 (Chapter 7). The records are part of the court case file and are thus not subject to FOA.

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

Because this is a matter of public policy, the Judicial Branch defers to the Legislature to determine the appropriateness of this exception.

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

The Judicial Branch has not encountered any problems in applying this exception.

4. Does your agency recommend changes to this exception?

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

No.

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

None known.

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

§7014. Confidentiality; court costs

1. Confidentiality of proceedings and records. All court proceedings occurring under this chapter are confidential and closed to the public, unless the person seeking sterilization or being considered for sterilization, personally or through that person's attorney, requests that the proceedings be open to the public. Records of the court proceedings are not open to inspection by the public without the consent, personally or through that person's attorney, of the person seeking sterilization or for whom sterilization is being considered.

[PL 1993, c. 360, Pt. I, §2 (AMD).]

2. Costs and fees. The court, after considering the financial resources of the parties concerned and the source of a petition under this chapter, shall assess court costs and attorneys' fees.

[PL 1983, c. 459, §7 (NEW).]

SECTION HISTORY

PL 1983, c. 459, §7 (NEW). PL 1993, c. 360, §12 (AMD).

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STATUTE: 34-B MRSA §7014, sub-§1

AGENCY: Maine Judicial Branch

CONTACT PERSON: Julia Finn

RETURN BY: October 23, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Reference #20
35-A MRSA §114, sub-§1

§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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STATUTE: 35-A MRSA §114, sub-§1

AGENCY: Public Utilities Commission

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

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



Subsection 114(1)(utility personnel records)

An application of this exception would most likely arise following a utility rate proceeding or audit where the Commission has acquired and examined utility records for the purpose of a proposed rate increase or other regulatory function. To the extent this type of information is even filed in such proceedings, such proceedings occur as a rule of thumb roughly 3-4 times per year. Commission staff, however, do not recall a recent instance where a request has been denied on this basis.

Subsection 704(5)(customer information information)

Customer specific information is filed with the Commission very frequently, and in particular with the Commission's Consumer Assistance Division (CAD). Given the volume of this type of information housed at the Commission, this is a frequent exemption cited by the Commission to deny a request. The Commission, however, produces redacted versions to the extent possible (redacting, for example, customer medical conditions and credit history).

Subsection 1311-A(protective orders)

The Commission issues protective orders under this provision premised on other statutory or regulatory authority and Maine Rule of Civil Procedure 26(c) to designate information confidential. The Commission exercises this authority frequently with respect to customer specific information and proprietary business information. Given the volume of this type of information that is relevant in the Commission's proceedings, this is a frequent exemption cited by the Commission. The Commission's general practice, however, is to require the filing of redacted versions in its dockets, thus making them publicly available to the extent possible.

**Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A**

Subsections 1311-B(1), (2), (4)(protective orders regarding operations)

The Commission issues protective orders under this provision to designate information related to the technical operations of utilities confidential. The Commission exercises this authority on a routine basis to protect critical infrastructure. The Commission cites this exemption on a moderate basis to deny a request.

Subsection 1316-A(communications regarding violation of state law)

The Commission infrequently receives information of this nature and Commission staff do not recall a recent instance where a request has been denied on this basis.

Subsection 7221(5)(ILEC competitive information)

The Commission very infrequently receives information of this nature and Commission staff do not recall a recent instance where a request has been denied on this basis.

Subsection 7225-A(1)(ILEC service quality reports)

These reports are filed on a regular basis, however, Commission staff do not recall a recent instance where a request has been denied on this basis.

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

The Commission supports the continuation of the subsections cited above. To the extent possible, the Commission provides public access to redacted materials. The information not made available publicly in a docket or in response to a request allows the Commission to conduct its work in the public interest. For example, if the Commission could not limit access to sensitive customer specific and proprietary business information, it would not be able to effectively regulate public utilities in the public interest.

Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

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

The Commission has not experienced any problems. The exceptions are clear.

4. *Does your agency recommend changes to this exception?*

No recommended changes.

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

Public utilities and their customers (residential, commercial, interconnecting), the Office of the Public Advocate

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

N/A

Reference #21
35-A MRSA §704, sub-§5

§704. Termination of utility services

The following provisions apply to termination of a customer's utility service. [PL 1987, c. 141, Pt. A, §6 (NEW).]

1. Residential customers. The commission shall adopt and promulgate reasonable rules after a hearing concerning the termination or disconnection of any residential customer's service by a transmission and distribution, gas, water or telephone utility of the State. These rules apply generally to all such utilities within the commission's jurisdiction and must provide for adequate written notice by that utility to the residential customer that the customer's utility bill has not been paid, and a notice of the prospective termination or disconnection and the right, prior to disconnection, to enter into reasonable installment payment arrangements with that utility; to settle any dispute concerning the proposed disconnection at an informal hearing with that utility and to appeal the results of that utility's decision to the commission. The rules must also provide that there may be no termination or disconnection during a limited medical emergency and for a just and reasonable procedure regarding reconnections of utility service and deposit requirements.

[PL 1999, c. 398, Pt. A, §18 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

1-A. Agreements with landlords. A transmission and distribution utility shall, upon request of a landlord, enter into an agreement with that landlord with respect to a residential rental property receiving transmission and distribution service in the name of that landlord's tenant to automatically transfer the service to the name of the landlord if the service would otherwise be disconnected. The transmission and distribution utility must notify the landlord within 72 hours of the transfer of the service to the landlord's name. Except upon the consent of the tenant, the transmission and distribution utility may not disclose to the landlord any personal or confidential information regarding the tenant or the tenant's account, except that a utility may disclose to the landlord that the service has been transferred to the landlord's name and any other information necessary to enable the utility to continue service to the premises.

The transmission and distribution utility may charge a reasonable fee for the costs associated with the transfer of the service to the landlord's name.

[PL 2013, c. 250, §1 (NEW).]

2. Nonresidential customers. Each public utility shall file with the commission schedules containing its terms and conditions applicable to termination of utility services to any nonresidential customer, which terms and conditions shall be subject to the commission's power under this Title. Every public utility shall comply with its terms and conditions. The commission shall adopt rules which provide a procedure for resolution by the commission or its delegate of disputes as to whether a proposed termination by a public utility is in compliance with its terms and conditions. A public utility may not terminate service to a nonresidential customer if the commission or its delegate rules within 7 days of receipt of the request for ruling that the proposed termination is not in compliance with the utility's terms and conditions. If the rules authorize a delegate to resolve disputes, the rule shall include a procedure for appeal of the decision to the commission.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

3. Violation of rules.

[PL 2003, c. 505, §15 (RP).]

4. Property loss suffered by a customer. Upon a finding by the District Court of a property loss suffered by a customer causally related to a willful or reckless violation by a public utility of any substantive rule adopted by the commission pursuant to the authority granted in this section, the court may order the public utility to compensate the customer for the actual loss, less any setoff for a balance found to be due the utility by the customer for unpaid utility service. That loss may not include consequential damages. No action for damages resulting from a termination that was in willful or reckless violation of the commission's rules may be commenced until at least 60 days after notice of a

claim setting forth the nature of the termination and the damages suffered has been provided to the utility. That notice must be provided to the utility in writing within 30 days of the termination. [PL 2003, c. 505, §16 (AMD).]

5. Confidentiality of customer information. The following provisions apply to the confidentiality of customer information.

A. Records containing the following information are confidential and are not public records for the purpose of Title 1, section 402, subsection 3:

(1) Information acquired by the consumer assistance and safety division regarding the payment and credit history and financial condition of a customer who has requested the assistance of the division; and

(2) Information acquired by the consumer assistance and safety division regarding the medical condition of a customer or member of a customer's family. [PL 2015, c. 8, §6 (AMD).]

B. Notwithstanding paragraph A, any person, agency or public utility directly involved in the investigation of an individual customer matter shall be given access to the information which is pertinent to the complaint. [PL 1987, c. 614, §2 (NEW).]

C. Compilations of information in which the customer's identity is not disclosed are not confidential. [PL 1987, c. 614, §2 (NEW).]

D. The consumer assistance and safety division shall prepare its decisions or abstracts of decisions in a manner that protects the confidentiality of customer information as provided by this subsection. Those decisions or abstracts of decisions must be available for public access. [PL 2015, c. 8, §6 (AMD).]

[PL 2015, c. 8, §6 (AMD).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1987, c. 614, §2 (AMD). PL 1999, c. 398, §A18 (AMD). PL 1999, c. 398, §§A104,105 (AFF). PL 1999, c. 547, §§B76,78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2003, c. 505, §§15,16 (AMD). PL 2013, c. 250, §1 (AMD). PL 2015, c. 8, §6 (AMD).

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STATUTE: 35-A MRSA §704, sub-§5

AGENCY: Public Utilities Commission

RETURN BY: October 2, 2026

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Thank you.

QUESTIONS

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

Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

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Subsection 114(1)(utility personnel records)

An application of this exception would most likely arise following a utility rate proceeding or audit where the Commission has acquired and examined utility records for the purpose of a proposed rate increase or other regulatory function. To the extent this type of information is even filed in such proceedings, such proceedings occur as a rule of thumb roughly 3-4 times per year. Commission staff, however, do not recall a recent instance where a request has been denied on this basis.



Subsection 704(5)(customer information information)

Customer specific information is filed with the Commission very frequently, and in particular with the Commission's Consumer Assistance Division (CAD). Given the volume of this type of information housed at the Commission, this is a frequent exemption cited by the Commission to deny a request. The Commission, however, produces redacted versions to the extent possible (redacting, for example, customer medical conditions and credit history).

Subsection 1311-A(protective orders)

The Commission issues protective orders under this provision premised on other statutory or regulatory authority and Maine Rule of Civil Procedure 26(c) to designate information confidential. The Commission exercises this authority frequently with respect to customer specific information and proprietary business information. Given the volume of this type of information that is relevant in the Commission's proceedings, this is a frequent exemption cited by the Commission. The Commission's general practice, however, is to require the filing of redacted versions in its dockets, thus making them publicly available to the extent possible.

Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

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The Commission issues protective orders under this provision to designate information related to the technical operations of utilities confidential. The Commission exercises this authority on a routine basis to protect critical infrastructure. The Commission cites this exemption on a moderate basis to deny a request.

Subsection 1316-A(communications regarding violation of state law)

The Commission infrequently receives information of this nature and Commission staff do not recall a recent instance where a request has been denied on this basis.

Subsection 7221(5)(ILEC competitive information)

The Commission very infrequently receives information of this nature and Commission staff do not recall a recent instance where a request has been denied on this basis.

Subsection 7225-A(1)(ILEC service quality reports)

These reports are filed on a regular basis, however, Commission staff do not recall a recent instance where a request has been denied on this basis.

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

The Commission supports the continuation of the subsections cited above. To the extent possible, the Commission provides public access to redacted materials. The information not made available publicly in a docket or in response to a request allows the Commission to conduct its work in the public interest. For example, if the Commission could not limit access to sensitive customer specific and proprietary business information, it would not be able to effectively regulate public utilities in the public interest.

Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

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

The Commission has not experienced any problems. The exceptions are clear.

4. *Does your agency recommend changes to this exception?*

No recommended changes.

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

Public utilities and their customers (residential, commercial, interconnecting), the Office of the Public Advocate

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

N/A

Reference #22
35-A MRSA §1311-A

§1311-A. Protective orders; confidential information

Records placed under a protective order by the commission pursuant to the Maine Rules of Civil Procedure, Rule 26 (c) in accordance with this section, are within the scope of a privilege against discovery within the meaning of Title 1, section 402, subsection 3, paragraph B and are not public records while under the protective order. [PL 1997, c. 691, §5 (AMD); PL 1997, c. 691, §10 (AFF).]

1. Issuance of protective orders. The following provisions govern the commission's issuance of protective orders.

A. The commission may issue protective orders to protect the interests of parties in confidential or proprietary information, trade secrets or similar matters as provided by the Maine Rules of Civil Procedure, Rule 26 (c). When issued, a protective order must be served on the party seeking the order. Service must be in accordance with the Maine Rules of Civil Procedure, Rule 5 (b). A requirement to disclose information pursuant to a protective order does not take effect until 24 hours after service of the protective order on the party seeking the protective order. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

B. In granting protective orders, the commission shall balance the need to keep the information confidential with the policies of conducting its proceedings in an open and fair manner where all parties have the right and opportunity to participate effectively as provided under the Maine Administrative Procedure Act, the Maine Rules of Civil Procedure, the Maine Rules of Evidence and the Maine freedom of access laws. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

C. The party requesting a protective order bears the burden of demonstrating the need for protection. The commission may partially and temporarily grant a request for a protective order, consistent with the provisions of paragraph D, to expedite the release of confidential information to certain parties, but the party seeking protection bears the burden of demonstrating that release of the information to other parties should be restricted. The commission may not issue a final order prohibiting or restricting access to a party without notice and an opportunity to be heard. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

D. If the commission issues a protective order that denies a party access to information, the commission shall provide the information to the party's attorney, if any, subject only to the restriction that the attorney use the information solely for the purpose of the proceeding and not disclose the information to others, except that:

- (1) The commission may deny an attorney access to information relating to bids if the attorney represents a party that made a competing bid; and
- (2) The commission may impose further limitations if the commission finds that an attorney has a direct, personal and substantial financial interest that could be benefited by access to the information to the detriment of the party that provided the information.

Unless the commission finds that the conditions of subparagraph (1) or (2) are met, the obligations of attorneys under the ethical rules, including the obligation to decline representation in certain cases, the authority of the commission to discipline attorneys who appear before the commission, including the authority, under section 1502, to punish for contempt persons who fail to comply with a protective order, and the commission's ability to recommend sanctions by other bodies, including the discipline of attorneys by the courts and the Board of Overseers of the Bar, is sufficient security to permit the attorney to have access to information in order to represent a party before the commission. [PL 2023, c. 646, Pt. A, §42 (AMD).]

E. The commission may prohibit or restrict the disclosure of information under protective order to a party's independent consultant only for compelling reasons and to the least extent necessary,

except that the commission may require that the information be used only for the purposes of the proceeding in which it is disclosed and may prohibit disclosure of the information by the independent consultant to others. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

F. Notwithstanding any other provision of this subsection:

- (1) The commission may deny all parties, including the commission and its staff, access to information if the commission finds that the potential for harm from disclosure of the information outweighs its probative value in the proceeding;
- (2) The commission may deny an attorney access to information under protective order if the commission finds that the attorney's request for access to the information is not made in good faith or that the attorney will not respect the terms of the protective order; and
- (3) The commission may deny or limit access by an attorney to information under protective order in a proceeding involving one or more special contracts under section 703 if:
 - (a) The information is customarily regarded as confidential business information and relates to the reasons for the parties' entering into the special contract; and
 - (b) The party represented by the attorney is not a party to the special contract with the utility.

The commission may deny or limit access to information by any attorney under this subparagraph after providing the attorney with an opportunity to be heard and upon finding that the potential for harm from disclosure of the information outweighs the need for disclosure.

[PL 2023, c. 64, §1 (AMD).]

[PL 2023, c. 646, Pt. A, §42 (AMD).]

2. Appeal. A party required to disclose information pursuant to a protective order issued by a hearing examiner in accordance with subsection 1 may appeal to the commissioners sitting as the commission in accordance with this subsection.

A. The basis for an appeal brought pursuant to this subsection is that the potential for damage resulting from the disclosure of the information in accordance with the protective order clearly exceeds the probative value of the information in the proceeding. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

B. A party bringing an appeal pursuant to this subsection must file the appeal within 24 hours of service of the protective order. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

C. If a party appeals in accordance with this subsection, the party is not required to disclose the information during the pendency of the appeal. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

D. The commission shall render a decision on the appeal brought pursuant to this subsection within 7 business days of the filing of the appeal. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

E. Notwithstanding subsection 1, the commission may impose limits on the disclosure of information beyond the limits imposed by the protective order issued in accordance with subsection 1 only if the commission finds that potential for damage resulting from disclosure of the information in accordance with the protective order clearly exceeds the probative value of the information in the proceeding. [PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

For purposes of this subsection, the term "hearing examiner" means a commission staff person authorized to issue a protective order in a commission proceeding.

[PL 1997, c. 691, §5 (NEW); PL 1997, c. 691, §10 (AFF).]

SECTION HISTORY

PL 1993, c. 535, §1 (NEW). PL 1997, c. 691, §5 (AMD). PL 1997, c. 691, §10 (AFF). PL 1999, c. 127, §D5 (AFF). PL 2023, c. 64, §1 (AMD). PL 2023, c. 646, Pt. A, §42 (AMD).

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STATUTE: 35-A MRSA §1311-A

AGENCY: Public Utilities Commission

RETURN BY: October 2, 2026

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Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

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Subsection 114(1)(utility personnel records)

An application of this exception would most likely arise following a utility rate proceeding or audit where the Commission has acquired and examined utility records for the purpose of a proposed rate increase or other regulatory function. To the extent this type of information is even filed in such proceedings, such proceedings occur as a rule of thumb roughly 3-4 times per year. Commission staff, however, do not recall a recent instance where a request has been denied on this basis.

Subsection 704(5)(customer information information)

Customer specific information is filed with the Commission very frequently, and in particular with the Commission's Consumer Assistance Division (CAD). Given the volume of this type of information housed at the Commission, this is a frequent exemption cited by the Commission to deny a request. The Commission, however, produces redacted versions to the extent possible (redacting, for example, customer medical conditions and credit history).

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Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

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The Commission infrequently receives information of this nature and Commission staff do not recall a recent instance where a request has been denied on this basis.

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The Commission very infrequently receives information of this nature and Commission staff do not recall a recent instance where a request has been denied on this basis.

Subsection 7225-A(1)(ILEC service quality reports)

These reports are filed on a regular basis, however, Commission staff do not recall a recent instance where a request has been denied on this basis.

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

The Commission supports the continuation of the subsections cited above. To the extent possible, the Commission provides public access to redacted materials. The information not made available publicly in a docket or in response to a request allows the Commission to conduct its work in the public interest. For example, if the Commission could not limit access to sensitive customer specific and proprietary business information, it would not be able to effectively regulate public utilities in the public interest.

Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

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

The Commission has not experienced any problems. The exceptions are clear.

4. *Does your agency recommend changes to this exception?*

No recommended changes.

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

Public utilities and their customers (residential, commercial, interconnecting), the Office of the Public Advocate

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

N/A

Reference #23

35-A MRSA §1311-B, sub-§1, 2, 4

§1311-B. Security of certain utility information

✓ **1. Designation of information as confidential.** If the commission, on its own motion or on petition of any person or entity, determines that public access to specific information about public utility technical operations in the State could compromise the security of public utility systems to the detriment of the public interest, the commission shall issue an order designating that information as confidential. Information designated as confidential pursuant to this section may include, but is not limited to, emergency response plans and network diagrams. Information designated as confidential under this section is not a public record under Title 1, section 402, subsection 3.
[PL 2001, c. 135, §1 (NEW).]

✓ **2. Treatment of information by commission; generally.** Except as otherwise provided in this section, the commission may not release information designated as confidential under subsection 1 and shall take appropriate steps to protect such information in its possession.
[PL 2001, c. 135, §1 (NEW).]

3. Access to information by parties in proceeding. Designation of information as confidential under subsection 1 does not limit the right of a party in a proceeding before the commission to obtain discovery of that information. Notwithstanding section 1311-A, subsection 1, paragraphs A and C, the commission may issue a protective order limiting discovery of information designated as confidential pursuant to subsection 1 if the commission finds that specific limits are necessary to protect the public interest.
[PL 2001, c. 135, §1 (NEW).]

✓ **4. Release of information to other state agencies.** The commission may release information designated as confidential pursuant to subsection 1 or require the release of that information by a public utility to another state agency to the extent necessary to support emergency preparedness or response, law enforcement or other public health and safety activities. The commission shall consult with a public utility before releasing or requiring the release of confidential information about that utility to a state agency unless the commission determines that the public health and welfare require immediate release without such consultation. The commission shall notify a public utility within 2 business days of providing information about that utility to a state agency pursuant to this subsection. As soon as practicable after receiving notice from a state agency pursuant to subsection 5, paragraph B of the agency's intent to release the information, the commission shall notify the public utility of the agency's intent.
[PL 2001, c. 135, §1 (NEW).]

5. Release by other state agencies. A state agency that receives information about a public utility pursuant to subsection 4:

A. May not use that information for any purpose other than for the support of emergency preparedness or response, law enforcement or other public health and safety activities; [PL 2001, c. 135, §1 (NEW).]

B. May not release that information to any other person or entity without prior notice to the commission unless the agency determines that immediate release of the information to one or more persons or entities is necessary for the protection of public health and safety; and [PL 2001, c. 135, §1 (NEW).]

C. Shall, when finished with the use of any documents received from the commission or from a public utility pursuant to subsection 4, return the documents to the commission or the public utility, as appropriate. [PL 2001, c. 135, §1 (NEW).]

[PL 2001, c. 135, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 135, §1 (NEW).

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STATUTE: 35-A MRSA §1311-B, sub-§1, 2, 4

AGENCY: Public Utilities Commission

RETURN BY: October 2, 2026

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Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

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Subsection 114(1)(utility personnel records)

An application of this exception would most likely arise following a utility rate proceeding or audit where the Commission has acquired and examined utility records for the purpose of a proposed rate increase or other regulatory function. To the extent this type of information is even filed in such proceedings, such proceedings occur as a rule of thumb roughly 3-4 times per year. Commission staff, however, do not recall a recent instance where a request has been denied on this basis.

Subsection 704(5)(customer information information)

Customer specific information is filed with the Commission very frequently, and in particular with the Commission's Consumer Assistance Division (CAD). Given the volume of this type of information housed at the Commission, this is a frequent exemption cited by the Commission to deny a request. The Commission, however, produces redacted versions to the extent possible (redacting, for example, customer medical conditions and credit history).

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**Right to Know Advisory Committee
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Maine Public Utilities Commission, Title 35-A**

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Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

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4. *Does your agency recommend changes to this exception?*

No recommended changes.

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Public utilities and their customers (residential, commercial, interconnecting), the Office of the Public Advocate

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

N/A

Reference #24
35-A MRSA §1316-A

§1316-A. Information related to violation of state law; confidentiality

Subject to the requirements of Title 5, section 9055 regarding ex parte communications but notwithstanding any other provision of law, the commission may declare and treat as confidential communications from any person concerning the affairs of a utility that are reasonably related to a violation of state laws. [PL 1993, c. 165, §2 (NEW).]

SECTION HISTORY

PL 1993, c. 165, §2 (NEW).

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STATUTE: 35-A MRSA §1316-A

AGENCY: Public Utilities Commission

RETURN BY: October 2, 2026

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Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

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Subsection 1311-A(protective orders)

The Commission issues protective orders under this provision premised on other statutory or regulatory authority and Maine Rule of Civil Procedure 26(c) to designate information confidential. The Commission exercises this authority frequently with respect to customer specific information and proprietary business information. Given the volume of this type of information that is relevant in the Commission's proceedings, this is a frequent exemption cited by the Commission. The Commission's general practice, however, is to require the filing of redacted versions in its dockets, thus making them publicly available to the extent possible.

Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

Subsections 1311-B(1), (2), (4)(protective orders regarding operations)

The Commission issues protective orders under this provision to designate information related to the technical operations of utilities confidential. The Commission exercises this authority on a routine basis to protect critical infrastructure. The Commission cites this exemption on a moderate basis to deny a request.

Subsection 1316-A(communications regarding violation of state law)

The Commission infrequently receives information of this nature and Commission staff do not recall a recent instance where a request has been denied on this basis.

Subsection 7221(5)(ILEC competitive information)

The Commission very infrequently receives information of this nature and Commission staff do not recall a recent instance where a request has been denied on this basis.

Subsection 7225-A(1)(ILEC service quality reports)

These reports are filed on a regular basis, however, Commission staff do not recall a recent instance where a request has been denied on this basis.

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

The Commission supports the continuation of the subsections cited above. To the extent possible, the Commission provides public access to redacted materials. The information not made available publicly in a docket or in response to a request allows the Commission to conduct its work in the public interest. For example, if the Commission could not limit access to sensitive customer specific and proprietary business information, it would not be able to effectively regulate public utilities in the public interest.

Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

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

The Commission has not experienced any problems. The exceptions are clear.

4. *Does your agency recommend changes to this exception?*

No recommended changes.

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

Public utilities and their customers (residential, commercial, interconnecting), the Office of the Public Advocate

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

N/A

Reference #25
35-A MRSA §7221, sub-§5

§7221. Designation of service providers

1. Initial designation of service providers. An entity that was an incumbent local exchange carrier as of January 1, 2012 shall provide provider of last resort service within its service area. [PL 2011, c. 623, Pt. A, §18 (NEW).]

2. Reassignment of service provider obligation. A service provider may petition the commission for authorization to assign its provider of last resort service obligation for a given geographic area to another voice service provider. The commission shall by rule develop a process for identifying and approving replacement service providers, but in no event may a voice service provider be designated as a replacement service provider without the express consent of the voice service provider. Before authorizing the reassignment of the provider of last resort service obligation to another voice service provider, the commission shall ensure that the voice service provider possesses the financial and technical capability to meet all provider of last resort service standards set by the commission by rule. The commission may not reassign the provider of last resort service obligation to any entity that would provide the service only as a reseller, as determined by the commission by rule. [PL 2011, c. 623, Pt. A, §18 (NEW).]

3. Modification of service obligations. Notwithstanding section 7201, subsection 7, the commission, in an adjudicatory proceeding, may relieve a service provider of the requirement that it have the capacity to maintain uninterrupted voice service during a power failure, either through the incorporation into the network or network interface devices of suitable battery backup or through electric current. The commission may grant the relief only if it finds that doing so is in the public interest. In determining that granting relief under this section is in the public interest, the commission must find that the benefits that would accrue to customers of the provider of last resort service from providing the relief would exceed the benefits to those customers of preserving the requirement. [PL 2011, c. 623, Pt. A, §18 (NEW).]

4. Removal of the provider of last resort service obligation in select municipalities. This subsection governs the removal of the obligation of a price cap ILEC to provide provider of last resort service in certain municipalities.

A. Thirty days after the effective date of this subsection a price cap ILEC is not obligated to provide provider of last resort service in the following municipalities:

- (1) Portland;
- (2) Lewiston;
- (3) Bangor;
- (4) South Portland;
- (5) Auburn;
- (6) Biddeford; and
- (7) Sanford. [PL 2015, c. 462, §3 (NEW).]

B. Every 6 months after the effective date of this subsection, the commission shall examine the service quality reports of a price cap ILEC under section 7225-A for the immediately preceding 2 consecutive quarters and, if the service quality requirements of section 7225-A have been met, the commission shall issue a certificate relieving the price cap ILEC of the obligation to provide provider of last resort service in 5 of the municipalities listed in this paragraph. The order in which a price cap ILEC may be relieved of the obligation to provide provider of last resort service in a municipality under this paragraph is as follows:

- (1) Scarborough;

- (2) Gorham;
- (3) Waterville;
- (4) Kennebunk;
- (5) Cape Elizabeth;
- (6) Old Orchard Beach;
- (7) Yarmouth;
- (8) Bath;
- (9) Westbrook;
- (10) Freeport;
- (11) Brewer;
- (12) Kittery;
- (13) Windham;
- (14) Brunswick; and
- (15) Augusta. [PL 2015, c. 462, §3 (NEW).]

C. For one year from the date a price cap ILEC is relieved of the obligation to provide provider of last resort service in a municipality in accordance with this subsection, the price cap ILEC shall continue to offer to each provider of last resort service customer in that municipality to whom it was providing the service on the date the obligation ceased a telephone service with the same rates, terms and conditions as it provides to provider of last resort service customers to whom it is obligated to provide provider of last resort service. [PL 2015, c. 462, §3 (NEW).]

D. Prior to the removal of the obligation to provide provider of last resort service in any municipality pursuant to this subsection, the commission shall hold a public meeting in the municipality to allow customers of the price cap ILEC to obtain information about the upcoming changes to service. [PL 2015, c. 462, §3 (NEW).]

E. The price cap ILEC shall give advance notice in its monthly billing statement to each customer in a municipality listed in this subsection in which the obligation to provide provider of last resort service will be removed. That notice must include the following information:

- (1) An existing customer will still be provided service for one year from the date on which the obligation to provide provider of last resort service is removed at the same rates, terms and conditions as the price cap ILEC provides to provider of last resort service customers to whom the price cap ILEC is obligated to provide provider of last resort service; and
- (2) The date, time and location of the public meeting required under paragraph D, which will be hosted by the commission in the municipality. [PL 2015, c. 462, §3 (NEW).]

[PL 2015, c. 462, §3 (NEW).]

5. Relief of provider of last resort service obligation. After a price cap ILEC has been relieved of the obligation to provide provider of last resort service in all the municipalities listed in subsection 4, the price cap ILEC may petition the commission under this subsection to be relieved of its provider of last resort service obligation in one or more additional municipalities.

A. The commission shall approve the petition if the commission finds:

- (1) With respect to a municipality, that, pursuant to the following standards, there is sufficient competition in that municipality to ensure access to affordable telephone service by households in the municipality:

(a) In addition to the price cap ILEC, there is at least one wireline-facilities-based voice network service provider that offers service to at least 95% of the households in the municipality; and

(b) One or more mobile telecommunications services providers offer, on a combined basis, mobile telecommunications services to at least 97% of the households in the municipality; and

(2) The price cap ILEC prior to filing the petition has met service quality requirements under section 7225-A in the immediately preceding 2 consecutive quarters. [PL 2015, c. 462, §3 (NEW).]

B. The commission shall establish by rule the sources of information and a methodology it will use to reasonably calculate the percentage of households served by wireline-facilities-based voice network service providers and mobile telecommunications services providers for purposes of making a determination under paragraph A. The commission may not require wireline-facilities-based voice network service providers and mobile telecommunications services providers to provide competitive information to the commission but may rely on other available sources for this information, including information available from the Federal Communications Commission. Competitive information about the extent of service provided by wireline-facilities-based voice network service providers and mobile telecommunications services providers used to make this determination is confidential and is not a public record under Title 1, section 402, subsection 3 and may not be disclosed to any person outside the commission. In developing the methodology under this paragraph, the commission may allow for reasonable adjustments to the information it receives if it is aware that actual availability of competitive services differs from what is reflected in the information. If the application of the commission's methodology results in a finding that the standards in paragraph A, subparagraph (1) have been met, there is a rebuttable presumption of sufficient competition in a municipality to ensure access to affordable telephone service by households in the municipality. [PL 2015, c. 462, §3 (NEW).]

C. Ninety days prior to filing a petition under this subsection, a price cap ILEC shall notify the commission and the Office of the Public Advocate of the price cap ILEC's intent to file a petition. The price cap ILEC shall also give advance notice of its intent to file a petition in its monthly billing statement to each customer in the municipality in which it will be seeking relief from the obligation to provide provider of last resort service.

The commission shall hold a public hearing in each affected municipality to allow customers of the price cap ILEC as well as other residents of the affected municipality to testify. The price cap ILEC shall give advance notice of the hearing to each customer in the municipality in its monthly billing statement and publish this notice in a newspaper of general circulation in that municipality. [PL 2015, c. 462, §3 (NEW).]

D. The commission shall issue an order granting or denying a petition within 180 days of receiving a petition under this subsection, except that the commission, at its discretion, may extend this period for up to an additional 30 days. [PL 2015, c. 462, §3 (NEW).]

E. For one year from the date the commission issues an order granting a price cap ILEC relief from the obligation to provide provider of last resort service in a municipality, the price cap ILEC shall continue to offer to each provider of last resort service customer in that municipality to whom it was providing the service on the date of that order a telephone service with the same rates, terms and conditions as it provides to provider of last resort service customers to whom it is obligated to provide provider of last resort service. [PL 2015, c. 462, §3 (NEW).]

For purposes of this subsection, "voice network service provider" has the same meaning as in section 7104.

[PL 2015, c. 462, §3 (NEW).]

6. Abandonment. A price cap ILEC may not discontinue, reduce or impair the service that it provides in a municipality, or part of a municipality, where it has previously served as the provider of provider of last resort service unless the commission approves the discontinuance, reduction or impairment. The commission may approve the discontinuance, reduction or impairment only if it finds that neither the present nor future public convenience and necessity will be adversely affected by such discontinuance, reduction or impairment of service.

In granting its approval under this subsection, the commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest. A price cap ILEC abandoning all or part of its plant, property or system or discontinuing service pursuant to authority granted by the commission under this subsection is deemed to have waived all objections to the terms, conditions or requirements imposed by the commission in its approval. A discontinuance approved under this subsection is not subject to further approval under section 1104.

[PL 2015, c. 462, §3 (NEW).]

7. Rules. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2015, c. 462, §3 (NEW).]

SECTION HISTORY

PL 2011, c. 623, Pt. A, §18 (NEW). PL 2015, c. 462, §3 (AMD).

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PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

STATUTE: 35-A MRSA §7221, sub-§5

AGENCY: Public Utilities Commission

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
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Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

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Subsection 114(1)(utility personnel records)

An application of this exception would most likely arise following a utility rate proceeding or audit where the Commission has acquired and examined utility records for the purpose of a proposed rate increase or other regulatory function. To the extent this type of information is even filed in such proceedings, such proceedings occur as a rule of thumb roughly 3-4 times per year. Commission staff, however, do not recall a recent instance where a request has been denied on this basis.

Subsection 704(5)(customer information information)

Customer specific information is filed with the Commission very frequently, and in particular with the Commission's Consumer Assistance Division (CAD). Given the volume of this type of information housed at the Commission, this is a frequent exemption cited by the Commission to deny a request. The Commission, however, produces redacted versions to the extent possible (redacting, for example, customer medical conditions and credit history).

Subsection 1311-A(protective orders)

The Commission issues protective orders under this provision premised on other statutory or regulatory authority and Maine Rule of Civil Procedure 26(c) to designate information confidential. The Commission exercises this authority frequently with respect to customer specific information and proprietary business information. Given the volume of this type of information that is relevant in the Commission's proceedings, this is a frequent exemption cited by the Commission. The Commission's general practice, however, is to require the filing of redacted versions in its dockets, thus making them publicly available to the extent possible.

Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

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The Commission infrequently receives information of this nature and Commission staff do not recall a recent instance where a request has been denied on this basis.

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The Commission very infrequently receives information of this nature and Commission staff do not recall a recent instance where a request has been denied on this basis.

Subsection 7225-A(1)(ILEC service quality reports)

These reports are filed on a regular basis, however, Commission staff do not recall a recent instance where a request has been denied on this basis.

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Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

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The Commission has not experienced any problems. The exceptions are clear.

4. *Does your agency recommend changes to this exception?*

No recommended changes.

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

Public utilities and their customers (residential, commercial, interconnecting), the Office of the Public Advocate

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

N/A

Reference #26
35-A MRSA §7225-A, sub-§1

§7225-A. Price cap ILEC service quality requirements

1. Service quality metrics reporting. A price cap ILEC shall report to the commission quarterly on service quality using the following metrics, using rolling one-year averages, in areas where provider of last resort service is available:

- A. Network trouble rates; [PL 2015, c. 462, §5 (NEW).]
- B. The percentage of network troubles not cleared in 48 hours; [PL 2015, c. 462, §5 (NEW).]
- C. The percentage of installation appointments not met; and [PL 2015, c. 462, §5 (NEW).]
- D. The average delay, in days, for missed installation appointments. [PL 2015, c. 462, §5 (NEW).]

A report submitted under this subsection is confidential and not a public record under Title 1, section 402, subsection 3 and may not be disclosed to any person outside the commission, except as provided in subsection 3.

[PL 2015, c. 462, §5 (NEW).]

2. Minimum requirements. A price cap ILEC shall provide service that meets the following minimum requirements, based on rolling one-year averages, in the areas in which it serves as provider of provider of last resort service:

- A. Less than 3 network troubles per 100 customers; [PL 2015, c. 462, §5 (NEW).]
- B. Less than 20% of network troubles not cleared within 48 hours; [PL 2015, c. 462, §5 (NEW).]
- C. Less than 12% of all installation appointments not met; and [PL 2015, c. 462, §5 (NEW).]
- D. Less than a 9-day average delay for missed installation appointments. [PL 2015, c. 462, §5 (NEW).]

[PL 2015, c. 462, §5 (NEW).]

3. Failure to meet service quality requirements. If a price cap ILEC fails to meet any service quality requirement in this section for any 2 consecutive quarters, the results for these service quality requirements for these quarters are no longer confidential and become public records. The commission shall investigate a failure to meet a service quality requirement. If the commission concludes after investigation that the failure to meet a service quality requirement is due to factors within the control of the price cap ILEC, the commission shall, by order, direct the price cap ILEC to take such steps as the commission determines necessary to meet the requirement. If the provider fails to comply with the commission's order, the commission shall impose a penalty in accordance with section 1508-A, subsection 1, paragraph A in an amount sufficient to ensure compliance with that order. Nothing in this subsection limits the commission's authority to direct a price cap ILEC to act to improve service under any other provision of this chapter.

[PL 2015, c. 462, §5 (NEW).]

SECTION HISTORY

PL 2015, c. 462, §5 (NEW).

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STATUTE: 35-A MRSA §7225-A, sub-§1

AGENCY: Public Utilities Commission

RETURN BY: October 2, 2026

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Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

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Right to Know Advisory Committee
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Right to Know Advisory Committee
October 2, 2026, questionnaire
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4. *Does your agency recommend changes to this exception?*

No recommended changes.

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

Public utilities and their customers (residential, commercial, interconnecting), the Office of the Public Advocate

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

N/A

Reference #27
35-A MRSA §8703, sub-§5

§8703. Requirements

Telecommunications relay services must conform to the following requirements. [PL 1989, c. 851, §7 (NEW).]

1. Geographic availability. Services must be available on a statewide basis to the extent that they are technologically feasible.

[PL 2009, c. 68, §12 (AMD).]

2. Temporal availability. Services must be available 24 hours a day for every calendar day of the year.

[PL 1989, c. 851, §7 (NEW).]

3. Accessibility. Relay service operators may not refuse calls or limit the length of calls.

[PL 1989, c. 851, §7 (NEW).]

4. Blockage level. The allowable blockage level for the telecommunications relay services must be reasonable. Complaints relating to the reasonableness of the blockage level may be brought to the commission by the council or by 10 or more aggrieved persons pursuant to section 1302, subsection 1.

[PL 2017, c. 408, §5 (AMD).]

5. Confidentiality. The providers of telecommunications relay services shall keep relay service communications confidential.

[PL 2015, c. 250, Pt. C, §6 (AMD).]

6. User fee prohibited. A separate fee for telecommunications relay services may not be assessed to users of the services.

[PL 1989, c. 851, §7 (NEW).]

7. Recovery of expenses and costs. The costs for telecommunications relay services must be recovered through the state universal service fund pursuant to section 7104, subsection 7.

[PL 2005, c. 305, §3 (AMD).]

8. Council. The providers of telecommunications relay services must take into consideration any comments from the council.

[PL 2017, c. 408, §5 (AMD).]

9. Restrictions. Upon request, the providers of telecommunications relay services shall make known to users of the services any restrictions on the types of calls handled such as collect calls and automated information services.

[PL 1989, c. 851, §7 (NEW).]

10. Notification of rates or charges. Upon request, the providers of telecommunications relay services shall make known to users any rates or charges for the services.

[PL 1989, c. 851, §7 (NEW).]

SECTION HISTORY

PL 1989, c. 851, §7 (NEW). PL 2005, c. 305, §3 (AMD). PL 2009, c. 68, §12 (AMD). PL 2015, c. 250, Pt. C, §6 (AMD). PL 2017, c. 408, §5 (AMD).

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STATUTE: 35-A MRSA §8703, sub-§5

AGENCY: Maine Telecommunications Relay Services Council

CONTACT PERSON: Ben Frech

RETURN BY: October 2, 2026

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

STATUTE: 35-A MRSA §8703, sub-§5

AGENCY: Maine Telecommunications Relay Services Council

CONTACT PERSON: Ben Frech

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

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

Records subject to exemption:

- Per statute, all relay service communications are confidential
- Any record containing personal information of a user of relay services
- Any record containing proprietary data belonging to a vendor

Frequency of application:

- Ben Frech was hired as the Executive Director in June of 2024. Prior to that, he represented the Office of the Public Advocate on the Council (appointed December of 2021). To his knowledge, the Council has not received a FOA request in that time period.

Frequency of citing exception in denying a request:

- (See above response)

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

The Council supports continuation of this exception in order to protect the privacy of relay users and the proprietary information of the vendors of relay services.

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

While the statute does not explicitly state that consumer and provider data is confidential, the Council believes the language is sufficient.

4. Does your agency recommend changes to this exception?

The Council would defer to the Office of the Attorney General.

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

- John Moore, Government – Sr. Executive Account Sales Manager (T-Mobile).
925-895-9176, john.e.moore@t-mobile.com
- Melissa McMahan, Relay State Programs Manager, Hamilton Relay.
301.338.0890, melissa.mcmahan@hamiltonrelay.com
- Phyllis Gardner, Chief Deputy Attorney General, Maine Office of the Attorney General. phyllis.gardiner@maine.gov

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

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

Reference #28
35-A MRSA §9207, sub-§1

§9207. Collection of data

Subject to the provisions in this section, the authority shall collect annually from communications service providers and any wireless providers that own or operate advanced communications technology infrastructure in the State data concerning infrastructure deployment for the purpose of developing mapping information to assist the authority in implementing the provisions of section 9202-A; pricing data for advertised retail pricing for broadband services offered in the State; and revenue data for the purpose of assessing communications service providers subject to section 9211. The authority shall permit providers that have provided data to the authority at a level of detail that the authority has determined acceptable to continue to provide the data in the same format. For mapping data, the authority, whenever possible, shall use data formats consistent with data formats used for mapping at the federal level. [PL 2019, c. 625, §9 (AMD).]

1. Confidential information. Data provided to the authority pursuant to this section is confidential. The authority, upon request or on its own motion, may initiate a proceeding to determine whether to remove the confidential designation of specific information provided under this section. The authority shall adopt rules pursuant to section 9205, subsection 3 defining the criteria it will use to satisfy the requirements of this paragraph and the types of information that would satisfy the criteria. The authority may not remove the confidential designation under this subsection until those rules are finally adopted.

Information designated as confidential under this subsection is not a public record under Title 1, section 402, subsection 3.

[PL 2019, c. 625, §9 (AMD).]

2. Protection of information. A communications service provider may request that confidential or proprietary information provided to the authority under this section not be viewed by those members of the authority who could gain a competitive advantage from viewing the information. Upon such a request, the authority shall ensure that the information provided is viewed only by those members of the authority and staff who do not stand to gain a competitive advantage and that there are adequate safeguards to protect that information from members of the authority who could gain a competitive advantage from viewing the information.

[PL 2019, c. 625, §9 (AMD).]

SECTION HISTORY

PL 2005, c. 665, §3 (NEW). PL 2019, c. 625, §9 (AMD).

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STATUTE: 35-A MRSA §9207, sub-§1

AGENCY: Maine Connectivity Authority

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Will Tew
Right to Know Advisory Committee
13 State House Station
Augusta, Maine 04333

RE: ConnectMaine Authority Response to Right to Know Advisory Committee Review of Public Record Exceptions Query

Dear Will,

This replies to your September 10, 2026 email on behalf of the Right to Know Advisory Committee requesting input from the ConnectMaine Authority (CME) on the following questions pertaining to the public record exceptions in the Advanced Technology Infrastructure Act, 35-A MRS §9201 et seq., which establishes CME.

Please note that CME and the Maine Connectivity Authority (MCA) have been administratively aligned and consolidated, with MCA staff supporting the both the MCA and the CME board of directors. Therefore, the Department of Economic and Community Development, which oversees CME, requested that MCA reply on behalf of CME. DECD staff have reviewed and are copied on this reply to assure alignment.

CME has provided brief responses, given the well-established nature of the CME law and implementing rule exceptions to the Maine Freedom of Access Act (FOAA). Please do not hesitate to contact us if you need any additional information.

QUESTIONS

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

Response 1:

- CME has administered this public records exception since CME's establishment with enactment of the CME charter law, 35-A MRS §9201 et seq (PL 2005, c. 665, §3).
- As authorized by 35-A MRS §9205(3), CME promulgated an implementing rule to support CME's execution of its statutory responsibilities, including rule provisions on Protection of Confidential Information (99-639 ConnectMaine Authority Chapter 101). [639c101 - JUL 2025.docx](#).
- The public records exceptions included in the CME law at 35-A MRS §9201 "Collection of Data" are designed to support CME's responsibility to collect information annually from communication service providers and certain wireless service providers concerning the following topics:

- infrastructure deployment for the purpose of developing mapping information to assist the CME in implementing the provisions of section 9202-A (establishing State policy of broadband services universal access for Maine);
 - data pertaining to pricing data for advertised retail pricing for broadband services offered in the State;
 - data to help CME determine extent of broadband service in Maine;
 - additional information to determine availability of broadband service in specific geographic locations to assist in evaluating or developing infrastructure grant proposals; and
 - revenue data for the purpose of assessing communications service providers subject to 35-A MRS §9211 (ConnectMaine Fund assessments on communication service providers).
- The CME implementing rule, Chapter 101, Section 4, provides all data concerning infrastructure deployment, pricing and revenue data including, but not limited to, service area and types of service data provided to CME, is confidential and therefore not a public record under Title 1, section 402, subsection 3. CME Chapter 101, Section 4(B) sets forth a process for removal of this confidential designation, requiring :
 - CME determination that extenuating circumstances warrant the removal;
 - CME determination that the removal of protections is as narrow as possible under the circumstances; and
 - CME has afforded the party providing the confidential data an opportunity to comment on the removal of the protections.
- The CME rule also provides that all data submitted by infrastructure or planning grant recipients in final project reports are confidential (Section 6), although CME is authorized to aggregate such data to produce an annual report on infrastructure deployment.
- The CME rule, Chapter 101, Section 7 “ConnectMaine Fund” provisions guiding imposition of the statutory assessment on communications services provide that data pertaining to the counts of lines or working telephone numbers will be considered Confidential Business Information under the CME law 35-A MRS §9207(1) and (2).
- CME does not frequently receive requests for information protected by the CME implementing rule Chapter 101, perhaps in part due to the long-standing rule provisions now familiar to industry participants.
- CME and MCA, working with the Legislative Energy, Utilities and Technology Committee, is evaluating consolidation legislation for MCA and CME. Such legislation would include a combined version of the CME and MCA public records exception provisions, essential to assure that the State of Maine can gather information on the broadband sector in Maine to best advance the established legislative goals of universal connectivity.
- CME has not encountered administrative or judicial litigation requests, and instead receives occasional general FOIA inquiries for information on various projects. CME

also increasingly receives form requests from commercial entities seeking CME procurement data, apparently for aggregation in a commercial publication pertaining to public procurement opportunities.

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

Response 2:

- CME strongly supports continuation of these public record exceptions to provide protections for the data CME is required to collect from the communication services providers. This data collection is essential for CME (and MCA) to assess the status of broadband infrastructure deployment, and the need for additional infrastructure construction.
- CME needs to protect information collected from communication services providers on existing and planned system construction to avoid the use of public grant funds on projects that would overbuild other private infrastructure systems.
- CME needs to secure technical and financial information from communication services providers concerning ISP-owned broadband construction projects funded by MCA grants to ensure effective grant oversight.
- CME needs to secure confidential business information from communication services providers UK as part of the administration of the ConnectMaine Fund assessments.

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

Response 3:

- CME and MCA plan to propose clarifications to the FOAA exceptions listed in both MCA and CME confidentiality provisions to give more specificity around the types of records to be protected. The consolidation legislation for MCA and CME provides an ideal opportunity to set out this proposal within the framework of the overall review of the MCA and CME laws.

4. Does your agency recommend changes to this exception?

Response 4:

- Not in the near term, but CME and MCA will provide upgrades on public records exceptions in CME and MCA laws for legislative consideration in the consolidation legislation.

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

Response 5:

- The same stakeholders who are interested in the consolidation legislation, including the telecommunications sector, municipalities, and members of the public.

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

Best regards,

Quynh Nguyen
FOAA Officer, MCA

Reference #29

35-A MRSA §9408, sub-§§1 and 2

§9408. Collection of data

Subject to the provisions of this section, the authority may collect data from communications service providers and any wireless providers that own or operate advanced communications technology infrastructure in the State concerning infrastructure deployment and costs, revenues and subscribership. [PL 2021, c. 364, §3 (NEW).]

1. Confidential information. If the authority, on its own or upon request of any person or entity, determines that public access to specific information about communications service providers or wireless providers in the State could compromise the security of public utility systems to the detriment of the public interest or that specific information is of a competitive or proprietary nature, the authority shall issue an order that sets forth its designation of the information as confidential. Information that may be designated as confidential pursuant to this subsection includes, but is not limited to, network diagrams. The authority may designate information as confidential under this subsection only to the minimum extent necessary to protect the public interest and the legitimate competitive or proprietary interests of a communications service provider or a wireless provider. The authority may not designate any information as confidential under this subsection until it has adopted rules to implement this subsection.

Information designated as confidential under this subsection is not a public record under Title 1, section 402, subsection 3.

[PL 2021, c. 364, §3 (NEW).]

2. Protection of information. A communications service provider or a wireless provider may request that information provided to the authority that the provider requests be designated as confidential under subsection 1 not be viewed by those members of the authority who could gain a competitive advantage from viewing the information. Upon such a request, the authority shall ensure that the information provided is viewed only by those members of the authority and staff who do not stand to gain a competitive advantage and that there are adequate safeguards to protect that information from members of the authority who could gain a competitive advantage from viewing the information. [PL 2021, c. 364, §3 (NEW).]

SECTION HISTORY

PL 2021, c. 364, §3 (NEW).

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STATUTE: 35-A MRSA §9408, sub-§§1 and 2

AGENCY: Maine Connectivity Authority

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Will Tew
Right to Know Advisory Committee
13 State House Station
Augusta, Maine 04333

RE: Response to Right to Know Advisory Committee Review of Public Record Exceptions Query

Dear Will,

This replies to your September 10, 2026 email on behalf of the Right to Know Advisory Committee requesting input from the Maine Connectivity Authority (MCA) on the following questions pertaining to the public record exceptions in the MCA charter law at 35-A MRS §9408. MCA has provided succinct responses, given the well-established nature of the MCA charter law exceptions to the Maine Freedom of Access Act (FOAA), but if you need any additional information please do not hesitate to contact us.

QUESTIONS

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

Response 1:

- MCA has administered this public records exception since MCA's establishment with enactment of the MCA charter law, 35-A MRS 9401 et seq.
- Records subject to the exception include those pertaining to (i) specific information about communications service providers or wireless providers in the State that could compromise the security of public utility systems to the detriment of the public interest; or (ii) specific information is of a competitive or proprietary nature.
- MCA does not frequently rely upon this provision, instead relying upon general FOAA exceptions, or upon the Connect Maine Authority (CME) public records exception and implementing rule (35-A MRS §9201; 99-639 of the Code of Maine Regulations (C.M.R.) ch. 101) when dealing with data collected by CME. MCA and CME have been administratively aligned and consolidated, enabling MCA staff to use the established CME annual reporting data to satisfy most MCA and CME general data requirements.
- MCA, working with the Legislative Energy, Utilities and Technology Committee, is evaluating consolidation legislation for MCA and CME. Such legislation would include a combined version of the CME and MCA public records exception provisions, essential to assure that the State of Maine can gather information on the broadband sector in Maine to best advance the established legislative goals of universal connectivity.

- MCA has not encountered administrative or judicial litigation requests, and instead receives occasional general FOA inquiries for information on various projects.

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

- MCA strongly supports continuation of this exception to provide protections for utility scale network diagrams and other critical infrastructure information. This is a priority for utility grid protection especially given the growing cyber security threats in the utility sector.
- MCA and CME need to secure information from Internet Service Providers concerning future construction plans in order to best allocate scarce public resources and avoid unnecessary overbuilding on planned private sector projects.
- MCA also needs to secure technical and financial information from Internet Service Providers concerning ISP-owned broadband construction projects funded by MCA grants to ensure effective grant oversight.

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

- MCA plans to propose clarifications to the FOIA exceptions listed in 34- MRS §9408 to give more specificity around the types of records to be protected. The consolidation legislation for MCA and CME provides an ideal opportunity to set out this proposal within the framework of the overall review of the MCA and CME laws.

4. Does your agency recommend changes to this exception?

- Not in the near term, but MCA will provide upgrades for legislative consideration in the potential future consolidation legislation.

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

- The same stakeholders who are interested in the consolidation legislation, including the telecommunications sector, municipalities, and members of the public.

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

Best regards,

Quynh Nguyen
FOIA Officer, MCA

Reference #30
35-A MRSA §10106, sub-§1

§10106. Freedom of access; confidentiality

The proceedings of the board and records of the trust are subject to the freedom of access laws, Title 1, chapter 13, except as specifically provided in this section. [RR 2009, c. 1, §25 (COR).]

1. Confidential records. The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. A record obtained or developed by the trust that:

(1) A person, including the trust, to whom the record belongs or pertains has requested be designated confidential and that the board has determined contains information that gives the owner or a user an opportunity to obtain a business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains; or

(3) Contains information about the energy usage profile of an identifiable customer of a transmission and distribution utility in the State or an identifiable customer of a distributor of heating fuel or other energy source; and [PL 2017, c. 163, §2 (AMD).]

B. A financial statement or tax return. [PL 2009, c. 372, Pt. B, §3 (NEW).]

The social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the trust is confidential.

The trust shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or records, including information designated confidential under this subsection, specified in the written request. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by it. [PL 2017, c. 163, §2 (AMD).]

2. Exceptions. Notwithstanding subsection 1, the following are not confidential and are public records:

A. Any otherwise confidential information the confidentiality of which the board determines to have been satisfactorily and effectively waived; [PL 2009, c. 372, Pt. B, §3 (NEW).]

B. Any otherwise confidential information that has already lawfully been made available to the public; and [PL 2009, c. 372, Pt. B, §3 (NEW).]

C. Impersonal, statistical or general information. [PL 2009, c. 372, Pt. B, §3 (NEW).]
[PL 2009, c. 372, Pt. B, §3 (NEW).]

3. Disclosure prohibited; further exceptions. The director or a trustee, officer, employee, agent, other representative of the trust or other person may not knowingly divulge or disclose records designated confidential by this section, except that the board, in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1-A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person; [PL 2009, c. 372, Pt. B, §3 (NEW).]

B. To a financing institution or credit reporting service; [PL 2009, c. 372, Pt. B, §3 (NEW).]

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance; [PL 2009, c. 372, Pt. B, §3 (NEW).]

D. If necessary to ensure collection of any obligation in which the trust has or may have an interest; [PL 2009, c. 372, Pt. B, §3 (NEW).]

E. In any litigation or proceeding in which the trust has appeared, introduction for the record of any information obtained from records designated confidential by this section; and [PL 2009, c. 372, Pt. B, §3 (NEW).]

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as any such order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as any such order appears on its face or otherwise to have been issued or made upon lawful authority. [PL 2009, c. 372, Pt. B, §3 (NEW).]

[PL 2009, c. 372, Pt. B, §3 (NEW).]

SECTION HISTORY

RR 2009, c. 1, §25 (COR). PL 2009, c. 372, Pt. B, §3 (NEW). PL 2011, c. 343, §1 (AMD). PL 2017, c. 163, §2 (AMD).

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STATUTE: 35-A MRSA §10106, sub-§1

ENTITY: Maine Efficiency Trust

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

STATUTE: 35-A MRSA §10106, sub-§1

ENTITY: Maine Efficiency Trust

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

QUESTIONS

- 1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).**
 - a. This provision enables the Efficiency Maine Trust ("the Trust") to efficiently and effectively administer programs to fulfill the statutory purposes enacted by the legislature.
 - b. description of the records subject to the exception:
 - i. The records subject to the exception are specified in 35-A MRSA §10106, sub-§1. In the relatively few cases where the Trust invokes the exceptions, it is most often related to requests for customer address, phone, and email information. Pursuant to the statute and at the request of entities wishing to share business-sensitive information as part of a project, we have received Board approval to designate certain business-sensitive information as confidential.
 - c. estimate of the frequency of its application:
 - i. The Trust accesses records that are subject to the exception daily because the programs run by the Trust require the collection of customer identifying information. Nevertheless, the Trust does not need to cite exceptions when responding to outside entities more than a few times per year.
 - d. an estimate of how frequently the exception is cited in denying a request for production of records

- i. The Trust estimates this happens less than five times a year. For example, in 2025, the Trust received a total of 27 FOA requests. Only two of the 27 were subject to the exemption because they included requests for customer address, phone, or email information.
- 2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.**
 - a. The Trust supports continuation of these exceptions.
- 3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?**
 - a. The process has worked relatively well, but the requirement to have Board approval to officially designate something as “confidential” is cumbersome. The Board meets monthly, and sometimes it would be in the public interest to handle issues of confidentiality more quickly, instead of awaiting the next available Board meeting to receive the designation.
- 4. Does your agency recommend changes to this exception?**
 - a. The Trust recommends the committee consider the following modifications:
 - i. Modify the statute to authorize the Executive Director (instead of the Trust Board) to make the “confidentiality” designation under 35-A, Sec. 10106(1)(A)(1), while preserving an appropriate record of the rationale for the determination, to make the process more efficient and timely.
 - ii. Extend the exception to include anything that is under a protective order or an non-disclosure agreement with another state agency or public utility.
 - iii. Modify the exception to allow the Trust to provide information deemed “confidential” under the exemption criteria to be provided under protective order to the Maine Public Utilities Commission, if requested.
- 5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.**
 - a. The Trust recommends that the committee include the input of the Efficiency Maine Trust Board Chair, Mark Isaacson.
- 6. Please provide any further information that you believe is relevant to the Advisory Committee’s review**
 - a. N/A

Reference #31
35-A MRSA §10313(9)

§10313. Competitive solicitations

The department is responsible for initiating and conducting procurements for energy, associated environmental attributes or other services from renewable and clean resources. For the purposes of this section, "renewable and clean resources" means generation eligible for any portfolio requirement in section 3210, energy storage, demand management or related transmission. Beginning January 15, 2027, and every 2 years thereafter, the department shall conduct one or more competitive solicitations during the following 2-year period to procure renewable and clean resources, which may include environmental attributes through long-term contracts if the department determines procurement is necessary to achieve the requirements of section 3210 or Title 38, section 576-A or 577, to meet and manage reasonably expected growth in electricity demand or to meet reliability needs or the department determines is otherwise necessary based on the comprehensive state energy plan prepared pursuant to section 10305, subsection 1. These contracts are not subject to the rules of the Chief Procurement Officer. [RR 2025, c. 1, Pt. A, §49 (COR).]

1. Objectives. The department shall conduct competitive solicitation under this section in a manner consistent with the following objectives:

- A. To provide the benefits of renewable and clean resources to ratepayers in the State; [PL 2025, c. 476, Pt. A, §16 (NEW).]
 - B. To provide the benefits of renewable and clean resources toward meeting the greenhouse gas reduction obligations and climate policies established by Title 38, sections 576-A and 577; [PL 2025, c. 476, Pt. A, §16 (NEW).]
 - C. To contribute to the State's economic and workforce goals, including through the actions detailed in section 3210-I, subsection 3, paragraph D, subparagraph (2); [PL 2025, c. 476, Pt. A, §16 (NEW).]
 - D. To minimize the impact of energy generation on the environment of the State; [PL 2025, c. 476, Pt. A, §16 (NEW).]
 - E. To ensure the protection of low-income ratepayers; and [PL 2025, c. 476, Pt. A, §16 (NEW).]
 - F. To avoid or minimize the curtailment of other renewable or clean resources. [PL 2025, c. 476, Pt. A, §16 (NEW).]
- [PL 2025, c. 476, Pt. A, §16 (NEW).]

2. Solicitation initiation. If the department determines one or more competitive solicitations are necessary based on the comprehensive state energy plan required pursuant to section 10305, subsection 1 and related analysis, the department shall initiate solicitations in order to select resources for contracts under this section. The department shall determine the total amount sought in all competitive solicitations within any 2-year period under this section in accordance with the state energy plan, except that the amount may not exceed 15% of the average annual statewide electric retail sales in the preceding 2-year period.

- A. The department shall develop a request for proposals for each competitive solicitation that meets the requirements of subsection 3. [PL 2025, c. 476, Pt. A, §16 (NEW).]
- B. The department shall consult with the Office of the Public Advocate in developing a request for proposals. The department may also solicit public input, including through requests for information, to obtain information prior to publishing any final competitive solicitation. [PL 2025, c. 476, Pt. A, §16 (NEW).]
- C. The department shall submit a request for proposals to the commission for approval prior to its issuance. The commission shall approve or reject a request for proposals submitted by the department in accordance with this section as expeditiously as possible but within 120 calendar days, unless a longer period is requested by the department. The commission shall approve a

request for proposals upon finding that it conforms to the requirements of subsection 3, is reasonably likely to result in one or more contracts that provide benefits to ratepayers in the State in excess of any costs to ratepayers as a result of the contract and is reasonably likely to result in competitive bids. [PL 2025, c. 476, Pt. A, §16 (NEW).]

D. The department may hire expert consultants necessary to assist in the development of the competitive solicitation and evaluation of proposals. [PL 2025, c. 476, Pt. A, §16 (NEW).]

E. The department may coordinate a competitive solicitation with other governmental entities or entities designated by those jurisdictions or transmission and distribution utilities. [PL 2025, c. 476, Pt. A, §16 (NEW).]

[PL 2025, c. 476, Pt. A, §16 (NEW).]

3. Solicitation requirements. A competitive solicitation under this section must be conducted using a request for proposals. A request for proposals must include, but is not limited to:

A. Criteria to determine the eligibility of prospective bidders; [PL 2025, c. 476, Pt. A, §16 (NEW).]

B. Criteria to determine the eligibility of submitted projects; [PL 2025, c. 476, Pt. A, §16 (NEW).]

C. Criteria to determine the selection of awarded projects, including criteria to determine ratepayer benefits and costs consistent with subsection 1; [PL 2025, c. 476, Pt. A, §16 (NEW).]

D. A process for the submission of questions by prospective bidders and the provisions of responses by the department in a manner that is equally accessible to all prospective bidders; [PL 2025, c. 476, Pt. A, §16 (NEW).]

E. A timeline with expected dates for each phase of the bidding and evaluation process; [PL 2025, c. 476, Pt. A, §16 (NEW).]

F. A standard form contract, which must include commercially reasonable terms and terms that to the extent practicable avoid or minimize the curtailment of other renewable or clean resources and protect ratepayers from impacts of negative pricing, and may not be for a term greater than 20 years, unless a different term is determined by the commission to be in the public interest; [PL 2025, c. 476, Pt. A, §16 (NEW).]

G. Notice of state wage, safety and apprenticeship requirements that may be required based on the solicitation type; and [PL 2025, c. 476, Pt. A, §16 (NEW).]

H. Any necessary materials or templates to enable submission of comparable and competitive bids. [PL 2025, c. 476, Pt. A, §16 (NEW).]

[PL 2025, c. 476, Pt. A, §16 (NEW).]

4. Evaluation and selection. The department shall evaluate and select proposals in accordance with this subsection. The department may coordinate with other entities, including, but not limited to, state agencies, the Office of the Public Advocate, transmission and distribution utilities, other states and the independent system operator of the New England bulk power system or a successor organization, in the evaluation and selection of proposals under this section. The department may find a submitted proposal ineligible if the department, at its sole discretion, determines the proposal does not conform to the criteria established in the request for proposals.

A. In evaluating eligible proposals and selecting one or more proposals for contract awards, the department shall give the greatest weight to the benefits to ratepayers. The department may not select a proposal for a contract award unless the department determines the proposal is reasonably likely to provide benefits to ratepayers in the State in excess of any costs to ratepayers as a result of the contract. [PL 2025, c. 476, Pt. A, §16 (NEW).]

B. In selecting projects that meet the requirements of paragraph A, the department shall also weigh factors consistent with the objectives established in subsection 1, as long as the factors and weight are consistent with the criteria established pursuant to subsection 3, paragraph C. [PL 2025, c. 476, Pt. A, §16 (NEW).]

C. The department shall evaluate and to the extent practicable, select proposals that avoid or minimize negative impact on other renewable or clean generation due to congestion and curtailment. [PL 2025, c. 476, Pt. A, §16 (NEW).]

[PL 2025, c. 476, Pt. A, §16 (NEW).]

5. Wage, safety and apprenticeship standards. If the department selects a project for a contract for energy from an assisted project located in the State as defined in Title 26, section 1304, subsection 1-A, the department shall ensure that standards under the contract applicable to contractors and subcontractors involved in the project's construction include requirements that a contractor or subcontractor:

A. Ensure that all construction workers earn compensation at or above the prevailing hourly wage as described in Title 26, section 1308; and [PL 2025, c. 476, Pt. A, §16 (NEW).]

B. Meet the requirements described in Title 26, sections 1301, 1317 and 3502. [PL 2025, c. 476, Pt. A, §16 (NEW).]

[PL 2025, c. 476, Pt. A, §16 (NEW).]

6. Contracts. Contracts must be based on the standard form contract required by subsection 3, paragraph F. The department may coordinate with any entity listed in subsection 4 in the negotiation of contracts. The department or a transmission and distribution utility may make a request to file information relevant to the contract negotiations with the commission pursuant to a protective order. [PL 2025, c. 476, Pt. A, §16 (NEW).]

7. Commission approval. The department shall submit contracts negotiated pursuant to subsection 6 to the commission for approval, and the commission shall approve a contract upon finding that:

A. The solicitation process conducted by the department conformed to the requirements of this section; [PL 2025, c. 476, Pt. A, §16 (NEW).]

B. The contract is commercially reasonable; and [PL 2025, c. 476, Pt. A, §16 (NEW).]

C. The contract is reasonably likely to provide benefits to ratepayers in the State in excess of any costs to ratepayers as a result of the contract, as determined using the criteria established pursuant to subsection 3, paragraph C. [PL 2025, c. 476, Pt. A, §16 (NEW).]

The commission shall approve or reject a contract within 120 calendar days, unless a longer period is requested by the department. If the commission approves a contract, the commission shall issue an order directing a transmission and distribution utility to act with respect to the contract. If the commission does not approve a contract, the commission may direct that the contract be amended and resubmitted to the commission for approval.

[PL 2025, c. 597, Pt. B, §9 (AMD).]

8. Bidding fees. The department may require a bidder to pay a reasonable and nonrefundable bidding fee to defray the department's administrative costs associated with a solicitation, as well as financial security due at contract execution, which may be at risk if projects fail to meet project milestones. The department may require a transmission and distribution utility to hold those fees. A bidding fee must be set forth in the request for proposals required by subsection 2.

[PL 2025, c. 476, Pt. A, §16 (NEW).]

9. Confidentiality. Proposals submitted in response to a solicitation and materials created or submitted during contract negotiations pursuant to this section are confidential, except the department

may share proposals and contract negotiation materials with the commission as necessary for the commission to approve a contract pursuant to subsection 7 and the department may make public certain information regarding submitted proposals at the conclusion of a solicitation, including, but not limited to, the identity of the bidder awarded a contract and the bid price.

[PL 2025, c. 597, Pt. B, §10 (AMD).]

10. Commission rules. The commission shall establish a process by rule for the review of requests for proposals under subsection 2, paragraph C and the review of contracts under subsection 7. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[RR 2025, c. 1, Pt. A, §50 (COR).]

SECTION HISTORY

PL 2025, c. 476, Pt. A, §16 (NEW). RR 2025, c. 1, Pt. A, §§49, 50 (COR). PL 2025, c. 597, Pt. B, §§9, 10 (AMD).

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STATUTE: 35-A MRSA §10313(9)

AGENCY: Maine Department of Energy Resources

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

MEMORANDUM

To: Will Tew, Right to Know Advisory Committee
From: Ethan Tremblay, Department of Energy Resources (DOER)
Date: October 5, 2026
Re: Public Records Exemption pursuant to 35-A MRSA §10313(9)

The Right to Know Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028. The exception cited above is within the scope of that review. You have requested input from the DOER during this process by requesting our response to the questions listed below, which we are pleased to provide. Please contact ethan.tremblay@maine.gov with any additional questions.

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

This exception was enacted by P.L. 2025 ch. 476, with an effective date of September 24, 2025. Since that time, DOER has not received any requests for public records to which this exemption would apply. The exception was also modified by P.L. 2026 ch. 597.

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

DOER supports continuation of this exception. As indicated, the exception has not been applied to any public records requests received by DOER to date. However, the purpose of the exception is to preserve and maximize the competitiveness of the solicitations administered by DOER pursuant to 35-A M.R.S. §10313. Without the exception, prospective bidders may choose not to participate in competitive solicitations, or may alter their bidding behavior in anticipation of commercially sensitive information becoming public. Furthermore, over time, bidders may alter their bids in an anti-competitive manner based on disclosure of commercially sensitive information.

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

We have no response, as the exception has not yet been applied.

4. *Does your agency recommend changes to this exception?*

No, as the exception has not yet been applied.

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

None, as the exception has not yet been applied.

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

None at this time. DOER would be pleased to provide any additional information or assistance that is helpful to the Advisory Committee in the course of its review. Please do not hesitate to contact ethan.tremblay@maine.gov.

Reference #32
36 MRSA §191

§191. Confidentiality of tax records**(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)**

1. Basic prohibition. It is unlawful for any public official or any employee or agent of the bureau to inspect willfully any return or examine information contained on any return, for any purpose other than the conduct of official duties. Except as otherwise provided by law, it is unlawful for any person who, pursuant to this Title, has been permitted to receive or view any portion of the original or a copy of any report, return or other information provided pursuant to this Title to divulge or make known in any manner any information set forth in any of those documents or obtained from examination or inspection under this Title of the premises or property of any taxpayer. This prohibition applies to both state tax information and federal tax information filed as part of a state tax return.

[PL 1997, c. 668, §17 (AMD).]

2. Exemptions. This section may not be construed to prohibit the following:

A. The delivery to a taxpayer or the taxpayer's duly authorized representative of a certified copy of any return, report or other information filed by the taxpayer pursuant to this Title; [PL 2017, c. 170, Pt. A, §1 (AMD).]

A-1. The disclosure to an authorized representative of the Maine Potato Board of information obtained by the assessor in the administration of chapter 710; [PL 2013, c. 10, §1 (NEW).]

B. The publication of statistics so classified to prevent the identification of particular reports or returns and the items thereof; [PL 1977, c. 668, §2 (NEW).]

C. **(TEXT EFFECTIVE UNTIL 1/01/27)** The inspection by the Attorney General of information filed by any taxpayer who has requested review of any tax under this Title or against whom an action or proceeding for collection of tax has been instituted; or the production in court or to the board or the State Board of Property Tax Review as established by Title 5, section 12004-B, subsection 6 on behalf of the State Tax Assessor, or any other party to an action or proceeding under this Title, of so much and no more of the information as is pertinent to the action or proceeding; [PL 2023, c. 360, Pt. A, §1 (AMD).]

C. **(TEXT EFFECTIVE 1/01/27)** The inspection by the Attorney General of information filed by any taxpayer who has requested review of any tax under this Title or against whom an action or proceeding for collection of tax has been instituted; or the production in court or to the office or the State Board of Property Tax Review as established by Title 5, section 12004-B, subsection 6 on behalf of the State Tax Assessor, or any other party to an action or proceeding under this Title, of so much and no more of the information as is pertinent to the action or proceeding; [PL 2025, c. 734, Pt. B, §10 (AMD); PL 2025, c. 734, Pt. B, §15 (AFF).]

D. The disclosure of information to duly authorized officers of the United States and of other states, districts and territories of the United States and of Canada and its provinces for use in administration and enforcement of this Title or of the tax laws of those jurisdictions. With respect to enforcement of the tax laws of other jurisdictions, the information may not be given to the duly authorized officer unless the officer's government permits a substantially similar disclosure of information to the taxing officials of this State and provides for the confidentiality of information in a manner substantially similar to the manner provided in this section; [PL 2009, c. 496, §6 (AMD).]

E. The provision of information, pursuant to a contract for administrative services, to a person retained on an independent contract basis or the authorized employees of that person or the provision of information to state employees outside the Bureau of Revenue Services for the purpose of acquiring assistance in the administration of this Title and the return to employees of the Bureau of Revenue Services of the information provided and additional information generated as a product

of the administrative services provided; [PL 1977, c. 668, §2 (NEW); PL 1997, c. 526, §14 (AMD).]

F. The transmission of information among employees of the Bureau of Revenue Services for the purposes of enforcing and administering the tax laws of this State and the delivery by a register of deeds to the State Tax Assessor or delivery by the State Tax Assessor to the appropriate municipal assessor or to the Maine Land Use Planning Commission or the Department of Health and Human Services of "declarations of value" in accordance with section 4641-D. The State Tax Assessor may require entities requesting information pursuant to this paragraph other than municipal assessors to provide resources sufficient to cover the cost of providing the forms; [PL 2011, c. 655, Pt. I, §9 (AMD); PL 2011, c. 655, Pt. I, §11 (AFF); PL 2011, c. 682, §38 (REV).]

G. The disclosure to the Attorney General of information related to a person who is the subject of a criminal investigation or prosecution, and the subsequent disclosure of that information by the Attorney General to a district attorney, an assistant district attorney or a state, county or local law enforcement agency that is participating in the criminal investigation or prosecution of that person. A request from the Attorney General for information related to a person who is the subject of a criminal investigation or prosecution must be submitted to the State Tax Assessor in writing and must include:

- (1) The name and address of the person to whom the requested information relates;
- (2) The taxable period or periods to which the requested information relates;
- (3) The statutory authority under which the criminal investigation or prosecution is being conducted; and
- (4) The specific reason the requested information is, or may be, relevant to the criminal investigation or prosecution.

The Attorney General or a district attorney, assistant district attorney or law enforcement agency to which the Attorney General has disclosed tax information related to a person who is the subject of a criminal investigation or prosecution shall retain physical control of that information until the conclusion of the criminal investigation or prosecution for which the information was requested, after which the information must be returned immediately to the assessor; [PL 2011, c. 240, §2 (AMD).]

H. The disclosure by the State Tax Assessor of the fact that a person is or is not registered under this Title or disclosure of both the fact that a registration under this Title has been revoked and the reasons for revocation. The exemption under this paragraph is limited to the disclosure of information applicable to the previous 6 years; [PL 2023, c. 360, Pt. C, §2 (AMD).]

I. The disclosure of information acquired pursuant to Part 2 and chapter 367, except for information identified as confidential within those provisions; [PL 2017, c. 211, Pt. A, §7 (AMD).]

J. The disclosure to a state agency seeking setoff of a liquidated debt against a tax refund pursuant to section 185-A of information necessary to effectuate the intent of that section; [PL 2019, c. 659, Pt. D, §7 (AMD).]

K. The disclosure by a municipal assessor, or by the State Tax Assessor with regard to the unorganized territory, of information contained on a declaration of value filed pursuant to section 4641-D or the Internet publication by the State Tax Assessor of information, other than taxpayer identification numbers, obtained from declarations of value filed pursuant to section 4641-D, except that, upon request by an individual who is certified by the Secretary of State as a participant in the Address Confidentiality Program pursuant to Title 5, section 90-B, the municipal assessor shall redact the name of that individual on the declaration of value form prior to disclosure; [PL 2015, c. 313, §4 (AMD).]

- L. The listing of gasoline distributors possessing a certificate under section 2904 and the number of taxable gallons sold by each gasoline distributor in this State each month; [PL 2013, c. 25, §1 (AMD).]
- M. The disclosure by employees of the Bureau of Revenue Services, in connection with their official duties relating to any examination, collection activity, civil or criminal tax investigation or any other offense under this Title, of return information to the limited extent that disclosure is necessary in obtaining information, which is not otherwise available, with respect to the correct determination of tax, liability for tax or the amount to be collected or with respect to the enforcement of this Title; [PL 1987, c. 769, Pt. A, §147 (RPR); PL 1997, c. 526, §14 (AMD).]
- N. The disclosure by the State Tax Assessor of computerized individual income tax data, without identification by taxpayer name, number or address, to a research agency of the Legislature; [PL 1991, c. 820, §5 (AMD).]
- O. The disclosure to an authorized representative of the Department of Health and Human Services of an individual's residence, employer, income and assets for child support enforcement purposes as required by the Social Security Act, 42 United States Code, Chapter 7, subchapter IV, Part D (1966), when a request containing the payor's social security number is made by the department; [PL 2009, c. 434, §11 (AMD).]
- P. The public disclosure by the State Tax Assessor of the name, last known business address and title of the professional license or certificate of any person whose license or certificate of authority to conduct a profession, trade or business in this State has not been renewed, reissued or otherwise extended by order of the assessor pursuant to section 175. This disclosure may be made only after no further administrative or judicial review of the order is available under section 151 or the Maine Administrative Procedure Act; [PL 1995, c. 368, Pt. W, §6 (AMD); PL 1995, c. 419, §30 (AMD).]
- Q. The listing of persons possessing certificates under section 3204 and the number of taxable gallons sold by each person possessing a certificate in this State each month; [PL 2013, c. 25, §2 (AMD).]
- R. The disclosure to the Department of Health and Human Services and to the Department of Administrative and Financial Services, Division of Financial and Personnel Services of information relating to the administration and collection of the taxes imposed by chapter 373, chapter 375 and chapter 377 for the purposes of administration of those taxes and the financial accounting and revenue forecasting of those taxes; [PL 2023, c. 412, Pt. XXX, §2 (AMD); PL 2023, c. 412, Pt. XXX, §15 (AFF).]
- S. [PL 2017, c. 170, Pt. A, §1 (RP).]
- T. The disclosure to an authorized representative of the Department of Health and Human Services of information in the possession of the bureau identifying the location of an interest-bearing account in the name and social security number of a delinquent payor of child support as requested by the Department of Health and Human Services; [RR 1995, c. 2, §90 (COR); PL 2003, c. 689, Pt. B, §6 (REV).]
- U. The disclosure by employees of the Bureau of Revenue Services to designated representatives of the Secretary of State of information required by the Secretary of State for the administration of the special fuel tax imposed by chapter 459; [PL 1997, c. 703, §2 (AMD).]
- V. The disclosure by employees of the Bureau of Revenue Services, to designated representatives of the Department of Labor, of all information required by the State Tax Assessor and the Commissioner of Labor for the administration of the taxes imposed by Part 8 and by Title 26, chapter 13 and the Competitive Skills Scholarship Fund contribution imposed by Title 26, section

1166 and of all information required by the Director of the Bureau of Labor Standards within the Department of Labor for the enforcement of Title 26, section 872; [PL 2009, c. 637, §13 (AMD).]

W. The disclosure by the State Tax Assessor to the State Auditor when necessary to the performance of the State Auditor's official duties; [PL 1999, c. 708, §14 (AMD).]

X. [PL 2001, c. 691, §3 (RP); PL 2001, c. 691, §6 (AFF).]

Y. The disclosure by the State Tax Assessor, upon request in writing of any individual against whom an assessment has been made pursuant to section 177, subsection 1, of the following information:

- (1) Information regarding the underlying tax liability to the extent necessary to apprise the individual of the basis of the assessment;
- (2) The name of any other individual against whom an assessment has been made for the same underlying tax debt; and
- (3) The general nature of any steps taken by the assessor to collect the underlying tax debt from any other individuals and the amount collected; [PL 2003, c. 390, §2 (AMD).]

Z. [PL 2021, c. 531, Pt. A, §1 (RP).]

AA. The disclosure by employees of the bureau to designated representatives of the Finance Authority of Maine necessary for the administration of section 6656, subsection 3 and section 6758, subsection 4 and of information required to ensure that recipients of certain benefits under Title 20-A, chapter 417-E are eligible to receive such benefits; [PL 2013, c. 67, §1 (AMD).]

BB. The disclosure to an authorized representative of the Department of Health and Human Services, Office of Child Care and Head Start of taxpayer information directly relating to the certification of investments eligible for or the eligibility of a taxpayer for the quality child care investment credit provided by section 5219-Q; [PL 2005, c. 683, Pt. A, §60 (RPR).]

CC. The disclosure to an authorized representative of the Department of Professional and Financial Regulation of information necessary for the administration of Title 10, chapter 222; [PL 2005, c. 683, Pt. A, §61 (RPR).]

DD. The delivery of a certified copy of any return, report or other information provided or filed pursuant to this Title by a partnership, corporation, trust or estate or any report of any examination of a return filed by a partnership, corporation, trust or estate to any person:

- (1) Who signed the return;
- (2) Who is the personal representative or executor of the estate filing the return;
- (3) Who was a member of the partnership filing the return during any part of the period covered by the return;
- (4) Who is a trustee of the trust filing the return;
- (5) Who was a shareholder during any part of the period covered by the return filed by an S corporation;
- (6) Who is an officer, or a bona fide shareholder of record owning 1% or more of the outstanding stock, of the corporation filing the return;
- (7) Who is the person authorized to act for the corporation if the corporation has been dissolved; or
- (8) Who is the duly authorized representative of any of the persons described in subparagraphs (1) to (7).

The exception under this paragraph does not include the disclosure of confidential information of a particular partner, shareholder, beneficiary or trustee or other person receiving income from one of the entities described in subparagraphs (1) to (8) unless otherwise authorized; [PL 2005, c. 332, §9 (NEW).]

DD. (REALLOCATED TO T. 36, §191, sub-§2, ¶HH) [PL 2005, c. 395, §3 (NEW); RR 2005, c. 1, §18 (RAL).]

DD. (REALLOCATED TO T. 36, §191, sub-§2, ¶II) [PL 2005, c. 396, §7 (NEW); RR-2005, c. 1, §19 (RAL).]

EE. The disclosure by the State Tax Assessor of the fact that a person has or has not been issued a certificate of exemption pursuant to section 1760 or 2013 or a resale certificate pursuant to section 1754-B, subsection 2-B or 2-C. The exemption under this paragraph is limited to the disclosure of information applicable to the previous 6 years; [PL 2025, c. 388, Pt. G, §3 (AMD); PL 2025, c. 388, Pt. G, §48 (AFF).]

FF. The disclosure to the Department of the Secretary of State, Bureau of Motor Vehicles of whether the person seeking registration of a vehicle has paid the tax imposed by Part 3 with respect to that vehicle; [PL 2005, c. 683, Pt. A, §62 (AMD).]

GG. The disclosure to the Department of Inland Fisheries and Wildlife, Division of Licensing and Registration of whether the person seeking registration of a snowmobile, all-terrain vehicle or watercraft has paid the tax imposed by Part 3 with respect to that snowmobile, all-terrain vehicle or watercraft; [PL 2011, c. 253, §37 (AMD).]

HH. (REALLOCATED FROM T. 36, §191, sub-§2, ¶DD) [PL 2015, c. 300, Pt. A, §5 (RP).]

II. (REALLOCATED FROM T. 36, §191, sub-§2, ¶DD) The disclosure to an authorized representative of the Maine Milk Commission of information on the quantity of packaged milk handled in the State and subject to the milk handling fee established in section 4902 and other information obtained by the assessor in the administration of chapter 721; [PL 2007, c. 539, Pt. M, §2 (AMD); PL 2007, c. 539, Pt. OO, §5 (AMD); PL 2007, c. 693, §7 (AMD); PL 2007, c. 694, §1 (AMD).]

JJ. The disclosure to the Chief Procurement Officer of a person's sales tax standing as necessary to enforce Title 5, section 1825-B, subsection 14; [PL 2023, c. 516, Pt. B, §53 (AMD).]

KK. The disclosure of information necessary to administer the setoff of liquidated tax debts pursuant to section 185; [PL 2017, c. 170, Pt. A, §1 (AMD).]

REVISOR'S NOTE: (Paragraph KK as enacted by PL 2007, c. 539, Pt. OO, §7 is REALLOCATED TO TITLE 36, SECTION 191, SUBSECTION 2, PARAGRAPH LL)

REVISOR'S NOTE: (Paragraph KK as enacted by PL 2007, c. 693, §9 is REALLOCATED TO TITLE 36, SECTION 191, SUBSECTION 2, PARAGRAPH MM)

REVISOR'S NOTE: (Paragraph KK as enacted by PL 2007, c. 694, §3 is REALLOCATED TO TITLE 36, SECTION 191, SUBSECTION 2, PARAGRAPH NN)

LL. (REALLOCATED FROM T. 36, §191, sub-§2, ¶KK) The disclosure to any state agency of information relating to the administration and collection of any debt transferred to the bureau for collection pursuant to section 112-A; [PL 2009, c. 652, Pt. A, §50 (AMD).]

MM. (REALLOCATED FROM T. 36, §191, sub-§2, ¶KK) The disclosure to an authorized representative of the Department of Economic and Community Development of information required for the administration of the visual media production credit under section 5219-Y, the employment tax increment financing program under chapter 917, the visual media production

reimbursement program under chapter 919-A or the Pine Tree Development Zone program under Title 30-A, chapter 206, subchapter 4; [PL 2009, c. 652, Pt. A, §51 (AMD).]

NN. **(REALLOCATED FROM T. 36, §191, sub-§2, ¶KK)** The disclosure to an authorized representative of the Wild Blueberry Commission of Maine of information required for or submitted to the assessor in connection with the administration of the tax imposed under chapter 701; [PL 2011, c. 240, §3 (AMD).]

OO. The disclosure to duly authorized officers of the Federal Government and of other state governments of information necessary to administer a set-off agreement pursuant to section 112, subsection 13. The information may not be disclosed unless the officer's government permits a substantially similar disclosure of information to the taxing officials of this State and protects the confidentiality of the information in a manner substantially similar to that provided by this section; [RR 2009, c. 2, §106 (COR).]

PP. The disclosure to the Department of Agriculture, Conservation and Forestry of information contained on the commercial forestry excise tax return filed pursuant to section 2726, such as the landowner name, address and acreage, to facilitate the administration of chapter 367; [PL 2011, c. 211, §19 (AMD); PL 2011, c. 331, §9 (AMD); PL 2011, c. 331, §§16, 17 (AFF); PL 2011, c. 439, §5 (AMD); PL 2011, c. 439, §12 (AFF); PL 2011, c. 657, Pt. W, §5 (REV).]

REVISOR'S NOTE: (Paragraph PP as enacted by PL 2009, c. 592, §2 is REALLOCATED TO TITLE 36, SECTION 191, SUBSECTION 2, PARAGRAPH QQ)

QQ. **(REALLOCATED FROM T. 36, §191, sub-§2, ¶PP)** The disclosure of registration, reporting and payment information to the Department of Environmental Protection necessary for the administration of Title 38, chapter 33; [PL 2015, c. 166, §12 (AMD).]

RR. [PL 2021, c. 1, Pt. M, §12 (RP).]

REVISOR'S NOTE: (Paragraph RR as enacted by PL 2011, c. 331, §11 is REALLOCATED TO TITLE 36, SECTION 191, SUBSECTION 2, PARAGRAPH TT)

REVISOR'S NOTE: (Paragraph RR as enacted by PL 2011, c. 439, §7 is REALLOCATED TO TITLE 36, SECTION 191, SUBSECTION 2, PARAGRAPH UU)

SS. The disclosure of information to the Finance Authority of Maine necessary for the administration of the new markets capital investment credit in sections 2533 and 5219-HH; [PL 2017, c. 375, Pt. G, §1 (AMD).]

REVISOR'S NOTE: (Paragraph SS as enacted by PL 2011, c. 439, §8 is REALLOCATED TO TITLE 36, SECTION 191, SUBSECTION 2, PARAGRAPH VV)

TT. **(REALLOCATED FROM T. 36, §191, sub-§2, ¶RR)** The disclosure to tax officials of other states, and to clearinghouses and other administrative entities acting on behalf of participating states, of information necessary for the administration of a multistate agreement entered into pursuant to section 2532; [PL 2011, c. 548, §12 (AMD).]

UU. **(REALLOCATED FROM T. 36, §191, sub-§2, ¶RR)** The production in court on behalf of the assessor or any other party to an action or proceeding under this Title, or the production pursuant to a discovery request under the Maine Rules of Civil Procedure or a request under the freedom of access laws, of any reconsideration decision or advisory ruling issued on or after July 1, 2012, in redacted format so as not to reveal information from which the taxpayer may be identified, except that federal returns and federal return information provided to the State by the Internal Revenue Service may not be disclosed except as permitted by federal law. A person requesting the production of any such document shall pay, at the time the request is made, all direct and indirect costs associated with the redacting of information from which the taxpayer or other interested party

may be identified, plus an additional fee of \$100 per request; [PL 2013, c. 424, Pt. A, §23 (RPR).]

VV. **(REALLOCATED FROM T. 36, §191, sub-§2, ¶SS)** [PL 2019, c. 379, Pt. C, §1 (RP).]

WW. [PL 2019, c. 401, Pt. C, §4 (RP).]

XX. **(TEXT EFFECTIVE UNTIL 1/01/27)** The disclosure of information by the assessor to the board or the State Board of Property Tax Review as established by Title 5, section 12004-B, subsection 6, except that such disclosure is limited to information that is pertinent to an appeal or other action or proceeding before the board or the State Board of Property Tax Review; [PL 2023, c. 360, Pt. A, §2 (AMD).]

XX. **(TEXT EFFECTIVE 1/01/27)** The disclosure of information by the assessor to the office or the State Board of Property Tax Review as established by Title 5, section 12004-B, subsection 6, except that such disclosure is limited to information that is pertinent to an appeal or other action or proceeding before the office or the State Board of Property Tax Review; [PL 2025, c. 734, Pt. B, §11 (AMD); PL 2025, c. 734, Pt. B, §15 (AFF).]

YY. **(TEXT EFFECTIVE UNTIL 1/01/27)** The inspection and disclosure of information by the board, or by the State Board of Property Tax Review as established by Title 5, section 12004-B, subsection 6, to the extent necessary to conduct appeals procedures pursuant to this Title and issue a decision on an appeal to the parties. The board and the State Board of Property Tax Review may make available to the public redacted decisions that do not disclose the identity of a taxpayer or any information made confidential by state or federal statute; [PL 2023, c. 360, Pt. A, §3 (AMD).]

YY. **(TEXT EFFECTIVE 1/01/27)** The inspection and disclosure of information by the office, or by the State Board of Property Tax Review as established by Title 5, section 12004-B, subsection 6, to the extent necessary to conduct appeals procedures pursuant to this Title and issue a decision on an appeal to the parties. The office and the State Board of Property Tax Review may make available to the public redacted decisions that do not disclose the identity of a taxpayer or any information made confidential by state or federal statute; [PL 2025, c. 734, Pt. B, §12 (AMD); PL 2025, c. 734, Pt. B, §15 (AFF).]

ZZ. The disclosure by the State Tax Assessor to a qualified Pine Tree Development Zone business that has filed a claim for reimbursement under section 2016 of information related to any insufficiency of the claim, including records of a contractor or subcontractor that assigned the claim for reimbursement to the qualified Pine Tree Development Zone business and records of the vendors of the contractor or subcontractor; [PL 2017, c. 288, Pt. B, §5 (RPR).]

AAA. The disclosure of information by the State Tax Assessor or the Associate Commissioner for Tax Policy to the Office of Program Evaluation and Government Accountability under Title 3, section 991 for the review and evaluation of tax expenditures pursuant to Title 3, chapter 37; [PL 2017, c. 288, Pt. B, §6 (RPR).]

BBB. The disclosure to an authorized representative of the Department of Professional and Financial Regulation, Bureau of Insurance of information necessary for the administration of taxes pursuant to chapter 357 and the credit for disability income protection plans in the workplace provided by section 5219-OO. Information disclosed pursuant to this paragraph may not be further disclosed by the Bureau of Insurance unless the disclosure is allowed pursuant to this section and Title 24-A, section 216; [PL 2019, c. 659, Pt. A, §1 (AMD).]

CCC. The disclosure of information to the Revenue Forecasting Committee or its staff under Title 5, section 1710-J, by or at the direction of the Associate Commissioner for Tax Policy when pertinent to the associate commissioner's duties of providing revenue forecasting analysis to the committee. The information may be disclosed only in oral or paper form and only after notice to the State Tax Assessor of the intended disclosure. The associate commissioner shall apprise the

committee members of the provisions regarding confidentiality of such information, of the continuing confidential nature of the disclosed information and the provision in Title 5, section 1710-J, allowing discussion of the information by the committee meeting in executive session not open to the public; [PL 2017, c. 475, Pt. A, §60 (AMD).]

DDD. The disclosure to the joint standing committee of the Legislature having jurisdiction over taxation matters pursuant to section 5219-QQ, subsection 4, paragraph B of the revenue loss due to refundable credits attributable to each taxpayer claiming the tax credit for major business headquarters expansions provided under that section, regardless of the number of persons eligible for the credit. For purposes of this paragraph, "revenue loss" has the same meaning as in section 5219-QQ, subsection 4, paragraph B. [PL 2017, c. 375, Pt. D, §2 (RPR).]

REVISOR'S NOTE: (Paragraph DDD as enacted by PL 2017, c. 284, Pt. UUUU, §16 is REALLOCATED TO TITLE 36, SECTION 191, SUBSECTION 2, PARAGRAPH EEE)

EEE. **(REALLOCATED FROM T. 36, §191, sub-§2, ¶(DDD))** The disclosure by employees of the bureau to an authorized representative of the Maine Commission on Public Defense Services for determining the eligibility for indigent legal services and the ability to reimburse expenses incurred for assigned counsel and contract counsel under Title 4, chapter 37. [PL 2023, c. 558, §11 (AMD).]

REVISOR'S NOTE: (Paragraph EEE as enacted by PL 2017, c. 361, §1 is REALLOCATED TO TITLE 36, SECTION 191, SUBSECTION 2, PARAGRAPH GGG)

FFF. The disclosure of information to the Department of Economic and Community Development necessary for the administration of the tax credit for major shipbuilding facility investments pursuant to section 5219-RR. [PL 2017, c. 361, §1 (NEW).]

GGG. **(REALLOCATED FROM T. 36, §191, sub-§2, ¶(EEE))** The disclosure to the joint standing committee of the Legislature having jurisdiction over taxation matters pursuant to section 5219-RR, subsection 9, paragraph B of the revenue loss attributable to each taxpayer claiming the tax credit under that section, regardless of the number of persons eligible for the credit; and [PL 2017, c. 361, §1 (NEW); RR 2017, c. 2, §15 (RAL).]

HHH. The disclosure to the Office of Program Evaluation and Government Accountability and the joint standing committee of the Legislature having jurisdiction over taxation matters pursuant to section 5219-VV, subsection 5, paragraph C of the revenue loss, including the loss due to refundable credits, attributable to each taxpayer claiming the tax credit for major food processing and manufacturing facility expansion provided under that section, regardless of the number of persons eligible for the credit. [PL 2019, c. 607, Pt. C, §1 (AMD).]

REVISOR'S NOTE: (Paragraph HHH as enacted by PL 2019, c. 401, Pt. E, §1 is REALLOCATED TO TITLE 36, SECTION 191, SUBSECTION 2, PARAGRAPH JJJ)

III. The disclosure of information to the Department of Economic and Community Development necessary for the administration of the tax credit for major food processing and manufacturing facility expansion pursuant to section 5219-VV. [PL 2019, c. 386, §1 (NEW).]

JJJ. **(REALLOCATED FROM T. 36, §191, sub-§2, ¶(HHH))** The disclosure of information to an authorized representative of the Public Utilities Commission for use in the commission's administration and oversight of the 9-1-1 funding under Title 25, section 2927-A, the state universal service fund under Title 35-A, section 7104 and the telecommunications education access fund under Title 35-A, section 7104-B. The assessor shall apprise the authorized representative of the provisions regarding confidentiality of such information and of the continuing confidential nature of the disclosed information. [PL 2025, c. 167, §48 (AMD).]

KKK. The disclosure of information to the Maine State Housing Authority necessary for the administration of the credit for affordable housing pursuant to section 5219-WW and for purposes of the report required by section 5219-WW, subsection 9. [PL 2019, c. 555, §4 (NEW).]

LLL. The disclosure of information to the Department of Economic and Community Development necessary for administration of the renewable chemicals tax credit pursuant to section 5219-XX. [PL 2019, c. 628, §1 (NEW).]

MMM. The disclosure to the Supreme Judicial Court of information required to make the report required under section 5219-ZZ, subsection 5. [RR 2021, c. 1, Pt. A, §42 (COR).]

REVISOR'S NOTE: (Paragraph MMM as enacted by PL 2021, c. 253, Pt. A, §1 is REALLOCATED TO TITLE 36, SECTION 191, SUBSECTION 2, PARAGRAPH PPP)

NNN. The disclosure to the joint standing committee of the Legislature having jurisdiction over taxation matters pursuant to section 5219-YY, subsection 4, paragraph C of the revenue loss, including the loss due to refundable credits, attributable to each taxpayer claiming the tax credit for paper manufacturing facility investment provided under that section, regardless of the number of persons eligible for the credit. [PL 2021, c. 482, §1 (NEW); PL 2021, c. 485, §3 (AFF).]

OOO. The disclosure of information to the Department of Economic and Community Development necessary for the administration of the tax credit for paper manufacturing facility investment pursuant to section 5219-YY. [PL 2021, c. 482, §2 (NEW); PL 2021, c. 485, §3 (AFF).]

PPP. **(REALLOCATED FROM T. 36, §191, sub-§2, ¶MMM)** The disclosure of information to the Finance Authority of Maine necessary for the administration of the seed capital investment tax credit in section 5216-B. [PL 2021, c. 253, Pt. A, §1 (NEW); RR 2021, c. 1, Pt. A, §41 (RAL).]

QQQ. The disclosure of information to the Houlton Band of Maliseet Indians, the Mi'kmaq Nation, the Passamaquoddy Tribe or the Penobscot Nation necessary for the administration of sales tax revenue transfers under section 1815. [PL 2025, c. 470, Pt. D, §1 (AMD); PL 2025, c. 470, Pt. D, §6 (AFF).]

REVISOR'S NOTE: (Paragraph QQQ as enacted by PL 2021, c. 715, §3 is REALLOCATED TO TITLE 36, SECTION 191, SUBSECTION 2, PARAGRAPH RRR)

RRR. **(REALLOCATED FROM T. 36, §191, sub-§2, ¶QQQ)** For information related to tax years beginning in 2023 and 2024 only, the disclosure of information to the Maine Health Insurance Marketplace to administer the easy enrollment health insurance program pursuant to Title 22, former section 5412 and the health insurance check-off box pursuant to former section 5294. [PL 2025, c. 2, Pt. RR, §3 (AMD).]

SSS. The disclosure of information to the Department of Economic and Community Development necessary for the administration of the Dirigo business incentives program and the joint standing committees of the Legislature having jurisdiction over taxation and economic development matters for purposes of the annual report required by section 5219-AAA. [PL 2023, c. 412, Pt. J, §7 (NEW).]

REVISOR'S NOTE: (Paragraph SSS as enacted by PL 2023, c. 441, Pt. F, §1 is REALLOCATED TO TITLE 36, SECTION 191, SUBSECTION 2, PARAGRAPH TTT)

TTT. **(REALLOCATED FROM T. 36, §191, sub-§2, ¶SSS)** The disclosure to the Treasurer of State when necessary for the performance of the Treasurer of State's official duties as administrator under Title 33, chapter 45 of the current mailing address for a taxpayer for purposes of returning unclaimed or abandoned property to the rightful owner or heir, except as prohibited by federal law. [PL 2023, c. 441, Pt. F, §1 (NEW); RR 2023, c. 1, Pt. A, §29 (RAL).]

UUU. The disclosure to the joint standing committee of the Legislature having jurisdiction over taxation matters pursuant to section 5219-BBB, subsection 4, paragraph C of the revenue loss,

including the loss due to refundable credits, attributable to each taxpayer claiming the tax credit for investment in qualified professional baseball facilities in the State provided under section 5219-BBB. [PL 2023, c. 667, §1 (NEW).]

[PL 2025, c. 734, Pt. B, §§10-12 (AMD); PL 2025, c. 734, Pt. B, §15 (AFF).]

3. Additional restrictions for information provided by Internal Revenue Service. Federal returns and federal return information provided to the State by the Internal Revenue Service may not be disclosed to other states, districts and territories of the United States or provinces of Canada, to legislative committees or the agents of the committees or to the Attorney General for the purpose of criminal investigations and prosecutions unrelated to this Title. These restrictions are in addition to those imposed by subsection 1.

[PL 1999, c. 708, §17 (AMD).]

3-A. Additional restrictions for proprietary information provided to assessor. Information and materials provided in confidence to the assessor and used by the bureau for the purpose of preparing legislation or legislative analysis, including the preparation of fiscal estimates for the Office of Fiscal and Program Review, are to be accorded the same confidentiality as established by this section for tax information.

[PL 2003, c. 390, §5 (NEW).]

3-B. Additional restrictions for certain information provided by the Department of Administrative and Financial Services. Information provided to the assessor by the Department of Administrative and Financial Services pursuant to section 175 and Title 22, section 2425-A, subsection 14, paragraph G may be used by the bureau only for the administration and enforcement of taxes imposed under this Title. These restrictions are in addition to those imposed by subsection 1.

[PL 2023, c. 637, §6 (AMD).]

4. Penalties. A person who willfully violates this section commits a Class E crime. An offender who is an officer or employee of the State must be dismissed from office.

[PL 2009, c. 496, §7 (AMD).]

SECTION HISTORY

PL 1977, c. 668, §2 (NEW). PL 1979, c. 127, §193 (AMD). PL 1981, c. 364, §18 (AMD). PL 1981, c. 504, §§1,2 (AMD). PL 1981, c. 698, §176 (AMD). PL 1985, c. 764, §§3-5 (AMD). PL 1987, c. 19, §§1-3 (AMD). PL 1987, c. 43 (AMD). PL 1987, c. 201, §§1-3 (AMD). PL 1987, c. 402, §§B22-B27 (AMD). PL 1987, c. 497, §§7-9 (AMD). PL 1987, c. 769, §§A145-A149 (AMD). PL 1991, c. 546, §7 (AMD). PL 1991, c. 820, §§5-7 (AMD). PL 1991, c. 837, §B18 (AMD). PL 1993, c. 395, §7 (AMD). RR 1995, c. 2, §§89-92 (COR). PL 1995, c. 178, §§1-3 (AMD). PL 1995, c. 368, §§W6-8 (AMD). PL 1995, c. 395, §§S1-3 (AMD). PL 1995, c. 419, §§30-33 (AMD). PL 1995, c. 625, §§A46-49 (AMD). PL 1995, c. 639, §6 (AMD). PL 1995, c. 657, §8 (AMD). PL 1995, c. 657, §10 (AFF). PL 1995, c. 694, §D61 (AMD). PL 1995, c. 694, §E2 (AFF). PL 1997, c. 504, §4 (AMD). PL 1997, c. 526, §14 (AMD). PL 1997, c. 537, §60 (AMD). PL 1997, c. 537, §62 (AFF). PL 1997, c. 668, §17 (AMD). PL 1997, c. 703, §§2-4 (AMD). PL 1999, c. 414, §§11-13 (AMD). PL 1999, c. 708, §§14-17 (AMD). PL 2001, c. 23, §1 (AMD). PL 2001, c. 293, §6 (AMD). PL 2001, c. 396, §11 (AMD). PL 2001, c. 439, §§L6-8 (AMD). PL 2001, c. 691, §3 (AMD). PL 2001, c. 691, §6 (AFF). PL 2001, c. 714, §CC2 (AMD). PL 2001, c. 714, §CC8 (AFF). RR 2003, c. 2, §114 (COR). PL 2003, c. 390, §§1-5 (AMD). PL 2003, c. 390, §55 (AFF). PL 2003, c. 668, §§9,10 (AMD). PL 2003, c. 668, §12 (AFF). PL 2003, c. 673, §DD2 (AMD). PL 2003, c. 689, §B6 (REV). PL 2003, c. 705, §3 (AMD). RR 2005, c. 1, §§18,19 (COR). PL 2005, c. 332, §§6-9 (AMD). PL 2005, c. 395, §§1-3 (AMD). PL 2005, c. 396, §§5-7 (AMD). PL 2005, c. 683, §§A60-64 (AMD). PL 2007, c. 328, §§2-4 (AMD). PL 2007, c. 352, Pt. A, §4 (AMD). PL 2007, c. 438, §10 (AMD). PL 2007, c. 539, Pt. M, §§2-4 (AMD). PL 2007, c. 539, Pt. OO, §§5-7 (AMD). PL 2007, c. 693, §§7-9 (AMD). PL 2007, c.

694, §§1-3 (AMD). RR 2009, c. 2, §§105-108 (COR). PL 2009, c. 340, §27 (AMD). PL 2009, c. 361, §§11-17 (AMD). PL 2009, c. 434, §§11, 12 (AMD). PL 2009, c. 470, §4 (AMD). PL 2009, c. 496, §§6, 7 (AMD). PL 2009, c. 568, §2 (AMD). PL 2009, c. 592, §2 (AMD). PL 2009, c. 637, §13 (AMD). PL 2009, c. 652, Pt. A, §§50-52 (AMD). RR 2011, c. 1, §§49-53 (COR). PL 2011, c. 211, §§19-21 (AMD). PL 2011, c. 240, §§2, 3 (AMD). PL 2011, c. 253, §37 (AMD). PL 2011, c. 331, §§9-11 (AMD). PL 2011, c. 331, §§16, 17 (AFF). PL 2011, c. 380, Pt. Q, §§2-4 (AMD). PL 2011, c. 380, Pt. Q, §7 (AFF). PL 2011, c. 439, §§5-8 (AMD). PL 2011, c. 439, §12 (AFF). PL 2011, c. 548, §§11, 12 (AMD). PL 2011, c. 644, §§5-7 (AMD). PL 2011, c. 655, Pt. I, §9 (AMD). PL 2011, c. 655, Pt. I, §11 (AFF). PL 2011, c. 657, Pt. W, §5 (REV). PL 2011, c. 682, §38 (REV). PL 2011, c. 694, §§7-10 (AMD). PL 2013, c. 10, §1 (AMD). PL 2013, c. 25, §§1, 2 (AMD). PL 2013, c. 67, §1 (AMD). PL 2013, c. 331, Pt. B, §§3-5 (AMD). PL 2013, c. 424, Pt. A, §23 (AMD). PL 2013, c. 595, Pt. J, §2 (AMD). PL 2013, c. 595, Pt. J, §4 (AFF). PL 2015, c. 166, §12 (AMD). PL 2015, c. 300, Pt. A, §§5-7 (AMD). PL 2015, c. 313, §4 (AMD). PL 2015, c. 344, §§6, 7 (AMD). PL 2015, c. 490, §§2-4 (AMD). PL 2015, c. 494, Pt. A, §§41-43 (AMD). PL 2017, c. 170, Pt. A, §1 (AMD). PL 2017, c. 211, Pt. A, §§7-9 (AMD). PL 2017, c. 284, Pt. UUUU, §16 (AMD). PL 2017, c. 288, Pt. B, §§5, 6 (AMD). PL 2017, c. 297, §1 (AMD). PL 2017, c. 361, §1 (AMD). PL 2017, c. 375, Pt. D, §§1, 2 (AMD). PL 2017, c. 375, Pt. G, §1 (AMD). PL 2017, c. 452, §29 (AMD). PL 2017, c. 475, Pt. A, §60 (AMD). PL 2017, c. 475, Pt. B, §2 (AMD). RR 2017, c. 2, §15 (COR). PL 2019, c. 379, Pt. C, §1 (AMD). PL 2019, c. 386, §1 (AMD). PL 2019, c. 401, Pt. B, §1 (AMD). PL 2019, c. 401, Pt. C, §4 (AMD). PL 2019, c. 401, Pt. E, §1 (AMD). PL 2019, c. 498, §25 (AMD). RR 2019, c. 1, Pt. A, §56 (COR). PL 2019, c. 555, §4 (AMD). PL 2019, c. 607, Pt. C, §1 (AMD). PL 2019, c. 628, §1 (AMD). PL 2019, c. 659, Pt. A, §1 (AMD). PL 2019, c. 659, Pt. D, §7 (AMD). PL 2021, c. 1, Pt. M, §12 (AMD). PL 2021, c. 253, Pt. A, §1 (AMD). PL 2021, c. 473, §1 (AMD). PL 2021, c. 482, §§1, 2 (AMD). PL 2021, c. 485, §3 (AFF). RR 2021, c. 1, Pt. A, §§41, 42 (COR). PL 2021, c. 531, Pt. A, §1 (AMD). PL 2021, c. 681, Pt. E, §1 (AMD). PL 2021, c. 681, Pt. E, §3 (AFF). PL 2021, c. 715, §3 (AMD). RR 2021, c. 2, Pt. A, §125 (COR). PL 2023, c. 360, Pt. A, §§1-3 (AMD). PL 2023, c. 360, Pt. C, §§2, 3 (AMD). PL 2023, c. 412, Pt. J, §7 (AMD). PL 2023, c. 412, Pt. XXX, §2 (AMD). PL 2023, c. 412, Pt. XXX, §15 (AFF). PL 2023, c. 441, Pt. F, §1 (AMD). RR 2023, c. 1, Pt. A, §29 (COR). PL 2023, c. 516, Pt. B, §53 (AMD). PL 2023, c. 558, §11 (AMD). PL 2023, c. 637, §6 (AMD). PL 2023, c. 667, §1 (AMD). PL 2025, c. 2, Pt. RR, §3 (AMD). PL 2025, c. 167, §48 (AMD). PL 2025, c. 388, Pt. G, §3 (AMD). PL 2025, c. 388, Pt. G, §48 (AFF). PL 2025, c. 470, Pt. D, §1 (AMD). PL 2025, c. 470, Pt. D, §6 (AFF). PL 2025, c. 734, Pt. B, §§10-12 (AMD). PL 2025, c. 734, Pt. B, §15 (AFF).

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STATUTE: 36 MRSA §191

AGENCY: Maine Revenue Services

RETURN BY: October 9, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



STATE OF MAINE
MAINE REVENUE SERVICES
P.O. BOX 1060
AUGUSTA, MAINE
04332-1060

ADMINISTRATIVE & FINANCIAL SERVICES

ELAINE CLARK
COMMISSIONER

MAINE REVENUE SERVICES

JEROME D. GERARD
EXECUTIVE DIRECTOR

To: Right to Know Advisory Committee
From: Jerome Gerard, Executive Director, Maine Revenue Services (MRS)
Re: Responses to Reference Nos. 32, 33, 36, 37, 39, and 40
Date: October 8, 2026

Reference #32 - 36 M.R.S. § 191

Question 1:

36 M.R.S. § 191, in part, prohibits the disclosure of confidential taxpayer information, unless a specific exception applies. Accordingly, MRS redacts or otherwise excludes confidential information from public record requests. Such confidential information generally includes any information required to be submitted under Title 36 of the Maine Revised Statutes (e.g., tax returns, taxpayer names, addresses, tax liabilities, and other identifiable information). Confidential information includes state and federal tax information filed as part of a Maine state tax return. While MRS staff apply the principles of 36 M.R.S. § 191 on a daily basis to deny unauthorized requests of taxpayer information, MRS estimates that this exception for confidential information is applied approximately only three to four times a month in response to a specific FOAA, administrative, or litigation request.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining confidential information is one of MRS's Statement of Values. The fact that the Internal Revenue Service requires confidentiality when providing the State of Maine federal tax information is further reason to continue this exception for confidential information.

Question 3:

MRS has experienced individual taxpayers submitting FOAA requests for their *own* taxpayer information for which they are already entitled under 36 M.R.S. § 191. Specifically, 36 M.R.S. § 191(2)(A) authorizes MRS to provide a taxpayer, or the taxpayer's representative, any information that the taxpayer has filed with MRS. While 36 M.R.S. § 191 does not specifically reference the FOAA statute, MRS believes it is sufficiently clear that the records covered are intended to be "confidential" for FOAA requests. *See, e.g.,* FOAA Exception Search Tool, available at:

<https://www.mainelegislature.org/legis/foa/> (listing 36 M.R.S. § 191 under “Taxation” exceptions). Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception at this time.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public whose sensitive tax information could be made public.

Question 6:

No further information is necessary for the Advisory Committee’s review.

Reference #33 - 36 M.R.S. § 194-D(4)

Question 1:

36 M.R.S. § 194-D addresses background investigations of “affected persons,” which includes MRS employees and other persons, such as contractors or other State of Maine employees, who have been determined to have access or the substantial possibility of access to federal tax information obtained from MRS. 36 M.R.S. § 194-D(4) provides that the results of the background investigation are exempt from public records requests. MRS estimates that this exception is rarely, if ever, used, as no requests for such information have been made to MRS.

Question 2:

MRS supports the continuation of this exception as this background investigation is also required by published authority by the Internal Revenue Services.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 194-D(4) specifically refers to the FOAA statute under 1 M.R.S. § 402(3), this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be the “affected persons,” as defined in 36 M.R.S. § 194-D.

Question 6:

No further information is necessary for the Advisory Committee's review.

Reference #36 - 36 M.R.S. § 653(1)

Question 1:

For property tax purposes, 36 M.R.S. § 653 provides an exemption for qualifying veterans. As part of this exemption, 36 M.R.S. § 653(1) states that an application and proof of entitlement filed for this exemption is confidential and may not be made available for public inspection. MRS is aware of only a single request for such information in 2026.

Question 2:

MRS supports the continuation of this exception for confidential information.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 653(1) specifically refers to the FOAA statute under 1 M.R.S., Chapter 13, this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be qualified veterans, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee's review.

Reference #37 - 36 M.R.S. § 841(2)

Question 1:

For property tax purposes, 36 M.R.S. § 841 provides general abatement procedures for property tax assessors to correct any illegality, error or irregularity in assessment. 36 M.R.S. § 841(2) provides procedures for abatements based on taxpayer hardship or poverty. Taxpayer applications for abatement, information submitted in support of the application, files and communications

relating to such application and the determination on the application for abatement are confidential. *See* 36 M.R.S. § 841(2)(E). MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

MRS has not experienced any issues with applying this exception. While 36 M.R.S. § 841(2) does not expressly reference the FOAA statutes, this language is sufficiently clear that the records covered are intended to be “confidential” for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public who have been granted hardship or poverty abatements, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee’s review.

Reference #39 - 36 M.R.S. § 6271(2)

Question 1:

For property tax purposes, 36 M.R.S. § 6271 provides general information for a property tax deferral program for senior citizens, based on income. As part of this program, 36 M.R.S. § 6271(2) provides that municipalities may publish and release as public information statistical summaries concerning the program as long as the release of the information does not jeopardize the confidentiality of individually identifiable information. *See* 36 M.R.S. § 6271(2)(*flush language*). MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

MRS has not experienced any issues with applying this exception. While 36 M.R.S. § 6271(2) does not explicitly reference the FOAA statutes, this language is sufficiently clear that the records covered are intended to be “confidential” for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public who have been granted property tax deferral, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee’s review.

Reference #40 - 36 M.R.S. § 6760

Question 1:

36 M.R.S., Chapter 917 address the Employment Tax Incremental Financing (ETIF) program. As part of this program, 36 M.R.S. § 6760 provides that certain information is confidential, including (1) records used for designation or approval; (2) records requested confidential or detriment; (3) private records; (4) ETIF program records; (5) creditworthiness records; and (6) confidential financial statements. Statutorily, no new certifications under the ETIF program are permitted after December 31, 2034. MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 6760 specifically refers to the FOAA statute under 1 M.R.S. § 402(3), this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be taxpayers participating in the program and the Department of Economic and Community Development.

Question 6:

No further information is necessary for the Advisory Committee's review.

Reference #33
36 MRSA §194-D, sub-§4

§194-D. Background investigations

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Affected person" means a person who is:

- (1) An applicant for employment with the bureau;
- (2) A contractor for the bureau, including the contractor's employees, subcontractors and subcontractors' employees, who provides or is assigned to provide services to the bureau under an identified contract;
- (3) A current employee of the bureau; or
- (4) An employee or contractor, including the contractor's respective employees, subcontractors and subcontractors' employees, of another state agency, if the assessor determines the employee's or contractor's duties involve access or the substantial possibility of access to federal tax information obtained from the bureau. [PL 2019, c. 607, Pt. D, §2 (AMD).]

B. "Confidential tax information" means any information the inspection or disclosure of which is limited or prohibited by section 191, including federal tax information. [PL 2019, c. 343, Pt. G, §13 (NEW).]

C. "Federal tax information" means a return and return information as defined in the Code, Section 6103(b) that is received directly from the United States Internal Revenue Service or obtained through a United States Internal Revenue Service-authorized secondary source and that is subject to the confidentiality protections and safeguarding requirements of the United States Internal Revenue Code and corresponding federal regulations and guidance. "Federal return information" does not include information in the possession of the State that is obtained from sources wholly independent from the United States Internal Revenue Service. [PL 2019, c. 343, Pt. G, §13 (NEW).]

D. "Identified contract" means a contract that the assessor determines involves access or the substantial possibility of access to the bureau's information technology systems or to confidential tax information. [PL 2019, c. 607, Pt. D, §3 (NEW).]

[PL 2019, c. 607, Pt. D, §§2, 3 (AMD).]

2. Background investigation requirements. The assessor shall perform background investigations for affected persons in accordance with this subsection.

A. As part of the process of evaluating an affected person, except for a current employee of the bureau, for employment with the bureau, a background investigation must be conducted before an offer of employment is extended. [PL 2019, c. 607, Pt. D, §4 (AMD).]

B. A background investigation for an affected person assigned to provide services to the bureau under an identified contract must be conducted before that affected person begins providing services to the bureau, and at least once every 5 years, as long as the affected person continues providing services to the bureau. [PL 2023, c. 613, Pt. D, §1 (AMD).]

C. As part of the process of evaluating an affected person for continued employment with the bureau, a background investigation must be conducted at least once every 5 years. [PL 2023, c. 613, Pt. D, §1 (AMD).]

D. A background investigation for an employee or contractor of another state agency must be conducted before that affected person is provided access, or the substantial possibility of access, to federal tax information obtained from the bureau, and at least once every 5 years, as long as the affected person continues to have such access. However, if the assessor determines that the affected person has been subject to a background investigation that satisfies the background investigation

standards established by the United States Internal Revenue Service regarding access to federal tax information within the past 5 years, no further investigation is required under this subsection for the 5-year period commencing at the time of the background investigation. [PL 2023, c. 613, Pt. D, §1 (AMD).]

The background investigation must include fingerprinting and obtaining national criminal history record information from the Federal Bureau of Investigation and must satisfy the background investigation standards established by the United States Internal Revenue Service regarding access to federal tax information.

[PL 2023, c. 613, Pt. D, §1 (AMD).]

3. Fingerprinting. An affected person must consent to having fingerprints taken for use in background investigations in accordance with this section. The State Police shall take or cause to be taken the affected person's fingerprints and shall forward the fingerprints to the Department of Public Safety, Bureau of State Police, State Bureau of Identification so that the State Bureau of Identification can conduct state and national criminal history record checks for the bureau. The State Police may charge the bureau for the expenses incurred in processing state and national criminal history record checks. The full fee charged under this subsection must be deposited in a dedicated revenue account for the State Bureau of Identification with the purpose of paying costs associated with the maintenance and replacement of the criminal history record systems.

[PL 2019, c. 343, Pt. G, §13 (NEW).]

4. Confidentiality. All information obtained by the assessor pursuant to this section is confidential and not a public record as defined in Title 1, section 402, subsection 3. The information must only be used for making decisions regarding the suitability of an affected person for new or continued employment with the bureau, to provide services to the bureau under an identified contract or to access federal tax information obtained from the bureau.

[PL 2019, c. 343, Pt. G, §13 (NEW).]

5. Affected person's access to criminal history record information. The bureau shall provide an affected person with access to information obtained pursuant to this section, if requested, by providing a paper copy of the criminal history record information directly to the affected person, but only after the bureau confirms that the affected person is the subject of the record. In addition, the bureau shall publish guidance on requesting such information from the Federal Bureau of Investigation.

[PL 2019, c. 343, Pt. G, §13 (NEW).]

6. Disqualifying offenses; refusal to consent. The assessor shall review the information obtained under this section and determine whether an affected person has a disqualifying offense that would prohibit authorizing that individual from accessing confidential tax information or federal tax information. If an affected person refuses to consent to the background investigation requirements under this section, that affected person is considered to have a disqualifying offense. If the affected person has a disqualifying offense:

A. The bureau may not employ or utilize that affected person in a position for which access to confidential tax information is required; [PL 2019, c. 343, Pt. G, §13 (NEW).]

B. If the affected person is an employee of the bureau or is assigned to provide services to the bureau under an identified contract and the assessor has authorized the affected person to access confidential tax information, the bureau shall terminate that affected person's access and may remove that affected person from any position that involves access, or the substantial possibility of access, to confidential tax information. If the affected person is an employee of the bureau, the bureau shall make a reasonable effort to retain that person as an employee in another position within the bureau that does not require access to confidential tax information; and [PL 2019, c. 343, Pt. G, §13 (NEW).]

C. If the affected person is an employee or contractor of another state agency, the assessor shall notify the other agency and the agency shall terminate the affected person's access, or substantial possibility of access, to federal tax information and may remove that affected person from any position that involves such access. If the affected person is an employee of the agency, the agency shall make a reasonable effort to retain that person as an employee in another position that does not require access to federal tax information. [PL 2019, c. 343, Pt. G, §13 (NEW).]

[PL 2019, c. 343, Pt. G, §13 (NEW).]

SECTION HISTORY

PL 2019, c. 343, Pt. G, §13 (NEW). PL 2019, c. 607, Pt. D, §§2-4 (AMD). PL 2023, c. 613, Pt. D, §1 (AMD).

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STATUTE: 36 MRSA §194-D, sub-§4

AGENCY: Maine Revenue Services

RETURN BY: October 9, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



JANET T. MILLS
GOVERNOR

STATE OF MAINE
MAINE REVENUE SERVICES
P.O. BOX 1060
AUGUSTA, MAINE
04332-1060

ADMINISTRATIVE & FINANCIAL SERVICES

ELAINE CLARK
COMMISSIONER

MAINE REVENUE SERVICES

JEROME D. GERARD
EXECUTIVE DIRECTOR

To: Right to Know Advisory Committee
From: Jerome Gerard, Executive Director, Maine Revenue Services (MRS)
Re: Responses to Reference Nos. 32, 33, 36, 37, 39, and 40
Date: October 8, 2026

Reference #32 - 36 M.R.S. § 191

Question 1:

36 M.R.S. § 191, in part, prohibits the disclosure of confidential taxpayer information, unless a specific exception applies. Accordingly, MRS redacts or otherwise excludes confidential information from public record requests. Such confidential information generally includes any information required to be submitted under Title 36 of the Maine Revised Statutes (e.g., tax returns, taxpayer names, addresses, tax liabilities, and other identifiable information). Confidential information includes state and federal tax information filed as part of a Maine state tax return. While MRS staff apply the principles of 36 M.R.S. § 191 on a daily basis to deny unauthorized requests of taxpayer information, MRS estimates that this exception for confidential information is applied approximately only three to four times a month in response to a specific FOAA, administrative, or litigation request.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining confidential information is one of MRS's Statement of Values. The fact that the Internal Revenue Service requires confidentiality when providing the State of Maine federal tax information is further reason to continue this exception for confidential information.

Question 3:

MRS has experienced individual taxpayers submitting FOAA requests for their *own* taxpayer information for which they are already entitled under 36 M.R.S. § 191. Specifically, 36 M.R.S. § 191(2)(A) authorizes MRS to provide a taxpayer, or the taxpayer's representative, any information that the taxpayer has filed with MRS. While 36 M.R.S. § 191 does not specifically reference the FOAA statute, MRS believes it is sufficiently clear that the records covered are intended to be "confidential" for FOAA requests. See, e.g., FOAA Exception Search Tool, available at:

<https://www.mainelegislature.org/legis/foa/> (listing 36 M.R.S. § 191 under “Taxation” exceptions). Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception at this time.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public whose sensitive tax information could be made public.

Question 6:

No further information is necessary for the Advisory Committee’s review.

Reference #33 - 36 M.R.S. § 194-D(4)

Question 1:

36 M.R.S. § 194-D addresses background investigations of “affected persons,” which includes MRS employees and other persons, such as contractors or other State of Maine employees, who have been determined to have access or the substantial possibility of access to federal tax information obtained from MRS. 36 M.R.S. § 194-D(4) provides that the results of the background investigation are exempt from public records requests. MRS estimates that this exception is rarely, if ever, used, as no requests for such information have been made to MRS.

Question 2:

MRS supports the continuation of this exception as this background investigation is also required by published authority by the Internal Revenue Services.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 194-D(4) specifically refers to the FOAA statute under 1 M.R.S. § 402(3), this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be the “affected persons,” as defined in 36 M.R.S. § 194-D.

Question 6:

No further information is necessary for the Advisory Committee's review.

Reference #36 - 36 M.R.S. § 653(1)

Question 1:

For property tax purposes, 36 M.R.S. § 653 provides an exemption for qualifying veterans. As part of this exemption, 36 M.R.S. § 653(1) states that an application and proof of entitlement filed for this exemption is confidential and may not be made available for public inspection. MRS is aware of only a single request for such information in 2026.

Question 2:

MRS supports the continuation of this exception for confidential information.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 653(1) specifically refers to the FOAA statute under 1 M.R.S., Chapter 13, this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be qualified veterans, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee's review.

Reference #37 - 36 M.R.S. § 841(2)

Question 1:

For property tax purposes, 36 M.R.S. § 841 provides general abatement procedures for property tax assessors to correct any illegality, error or irregularity in assessment. 36 M.R.S. § 841(2) provides procedures for abatements based on taxpayer hardship or poverty. Taxpayer applications for abatement, information submitted in support of the application, files and communications

relating to such application and the determination on the application for abatement are confidential. See 36 M.R.S. § 841(2)(E). MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

MRS has not experienced any issues with applying this exception. While 36 M.R.S. § 841(2) does not expressly reference the FOAA statutes, this language is sufficiently clear that the records covered are intended to be “confidential” for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public who have been granted hardship or poverty abatements, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee’s review.

Reference #39 - 36 M.R.S. § 6271(2)

Question 1:

For property tax purposes, 36 M.R.S. § 6271 provides general information for a property tax deferral program for senior citizens, based on income. As part of this program, 36 M.R.S. § 6271(2) provides that municipalities may publish and release as public information statistical summaries concerning the program as long as the release of the information does not jeopardize the confidentiality of individually identifiable information. See 36 M.R.S. § 6271(2)(flush language). MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

MRS has not experienced any issues with applying this exception. While 36 M.R.S. § 6271(2) does not explicitly reference the FOAA statutes, this language is sufficiently clear that the records covered are intended to be “confidential” for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public who have been granted property tax deferral, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee’s review.

Reference #40 - 36 M.R.S. § 6760

Question 1:

36 M.R.S., Chapter 917 address the Employment Tax Incremental Financing (ETIF) program. As part of this program, 36 M.R.S. § 6760 provides that certain information is confidential, including (1) records used for designation or approval; (2) records requested confidential or detriment; (3) private records; (4) ETIF program records; (5) creditworthiness records; and (6) confidential financial statements. Statutorily, no new certifications under the ETIF program are permitted after December 31, 2034. MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 6760 specifically refers to the FOAA statute under 1 M.R.S. § 402(3), this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be taxpayers participating in the program and the Department of Economic and Community Development.

Question 6:

No further information is necessary for the Advisory Committee's review.

Reference #34
36 MRSA §579

§579. Schedule, investigation

The owner or owners of forest land subject to valuation under this subchapter shall submit a signed schedule, on or before April 1st of the year in which that land first becomes subject to valuation under this subchapter, to the assessor upon a form prescribed by the State Tax Assessor, identifying the land to be valued under this subchapter, listing the number of acres of each forest type, showing the location of each forest type and representing that the land is used primarily for the growth of trees to be harvested for commercial use. Those schedules may be required at such other times as the assessor may designate upon 120 days' written notice. [PL 2011, c. 240, §6 (AMD).]

The assessor shall determine whether the land is subject to valuation and taxation under this subchapter and shall classify the land as to forest type. [PL 2011, c. 240, §6 (AMD).]

The assessor or the assessor's duly authorized representative may enter and examine the forest lands under this subchapter and may examine any information submitted by the owner or owners. A copy of the forest management and harvest plan required under section 574-B must be available to the assessor to review upon request and to the Director of the Bureau of Forestry within the Department of Agriculture, Conservation and Forestry or the director's designee to review upon request when the assessor seeks assistance in accordance with section 575-A. For the purposes of this paragraph, "to review" means to see or possess a copy of a plan for a reasonable amount of time to verify that the plan exists or to facilitate an evaluation as to whether the plan is appropriate and is being followed. Upon completion of the review, the plan must be returned to the owner or an agent of the owner. A forest management and harvest plan provided in accordance with this section is confidential and is not a public record as defined in Title 1, section 402, subsection 3. [PL 2003, c. 30, §1 (AMD); PL 2011, c. 657, Pt. W, §§5, 7 (REV); PL 2013, c. 405, Pt. A, §23 (REV).]

Upon notice in writing by certified mail, return receipt requested, or by another method that provides actual notice, any owner or owners shall appear before the assessor, at such reasonable time and place as the assessor may designate and answer questions or interrogatories the assessor considers necessary to obtain material information about those lands. [PL 2011, c. 240, §6 (AMD).]

If the owner or owners of any parcel of forest land subject to valuation under this subchapter fails to submit the schedules as provided under this section or fails to provide information after notice duly received as provided under this section, such owner or owners are deemed to have waived all rights of appeal pursuant to section 583 for that property tax year, except for the determination that the land is subject to valuation under this subchapter. [PL 2011, c. 240, §6 (AMD).]

It is the obligation of the owner or owners to report to the assessor any change of use or change of forest type of land subject to valuation under this subchapter. [PL 2011, c. 240, §6 (AMD).]

If the owner or owners fail to report to the assessor a change of use as required by the foregoing paragraph, the assessor shall assess the taxes that should have been paid, shall assess the penalty provided in section 581 and shall assess an additional penalty equal to 25% of the penalty provided in section 581. The assessor may waive the additional penalty for cause. [PL 2011, c. 240, §6 (AMD).]

For the purposes of this section, the acts of owners specified in this section may be taken by an authorized agent of an owner. [PL 1979, c. 666, §16 (NEW).]

SECTION HISTORY

PL 1971, c. 616, §8 (NEW). PL 1973, c. 308, §§10,11 (AMD). PL 1975, c. 765, §§10,11 (AMD). PL 1977, c. 509, §§6,7 (AMD). PL 1979, c. 666, §16 (RPR). PL 1981, c. 625, §3 (AMD). PL 1981, c. 706, §9 (AMD). PL 1987, c. 852, §2 (AMD). PL 1987, c. 861, §41 (AMD). PL 1989, c. 555, §17 (AMD). PL 2001, c. 603, §6 (AMD). PL 2003, c. 30, §1 (AMD). PL 2007, c. 438, §17 (AMD). PL 2011, c. 240, §6 (AMD). PL 2011, c. 657, Pt. W, §§5, 7 (REV). PL 2013, c. 405, Pt. A, §23 (REV).

STATUTE: 36 MRSA §579

AGENCY: Department of Agriculture, Conservation and Forestry

RETURN BY: October 9, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Reference #35
36 MRSA §581-G, sub-§3

§581-G. Report to Bureau of Forestry

1. Municipal report. The municipal assessor or chief assessor of a primary assessing area shall report annually to the Department of Agriculture, Conservation and Forestry, Bureau of Forestry by November 1st or 30 days following the tax commitment date, whichever is sooner, the following information relating to land taxed according to this subchapter:

- A. The names and addresses of forest landowners; [PL 2005, c. 358, §5 (NEW).]
 - B. The total number of acres taxed pursuant to this subchapter, including a breakdown of forest type, by softwood, mixed wood and hardwood; [PL 2005, c. 358, §5 (NEW).]
 - C. The year each parcel was first accepted for taxation under this subchapter; [PL 2005, c. 358, §5 (NEW).]
 - D. The year of the most recent recertification of each parcel; and [PL 2005, c. 358, §5 (NEW).]
 - E. The tax map number, plan number and lot number for each parcel listed. [PL 2005, c. 358, §5 (NEW).]
- [PL 2005, c. 358, §5 (NEW); PL 2011, c. 657, Pt. W, §§5, 7 (REV); PL 2013, c. 405, Pt. A, §23 (REV).]

2. Forms. The Department of Agriculture, Conservation and Forestry, Bureau of Forestry shall annually provide municipalities with forms for submitting the information required under subsection 1. To the extent that the Bureau of Forestry has the required information, the Bureau of Forestry shall include that information on the forms.

[PL 2005, c. 358, §5 (NEW); PL 2011, c. 657, Pt. W, §§5, 7 (REV); PL 2013, c. 405, Pt. A, §23 (REV).]

3. Confidentiality. Addresses, telephone numbers and electronic mail addresses of forest landowners owning less than 1,000 acres statewide contained in reports filed under this section are confidential when in possession of the Department of Agriculture, Conservation and Forestry, Bureau of Forestry and may be disclosed only in accordance with Title 12, section 8005.

[PL 2005, c. 358, §5 (NEW); PL 2011, c. 657, Pt. W, §§5, 7 (REV); PL 2013, c. 405, Pt. A, §23 (REV).]

SECTION HISTORY

PL 2005, c. 358, §5 (NEW). PL 2011, c. 657, Pt. W, §§5, 7 (REV). PL 2013, c. 405, Pt. A, §23 (REV).

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STATUTE: 36 MRSA §581-G, sub-§3

AGENCY: Department of Agriculture, Conservation and Forestry

RETURN BY: October 9, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Reference #36
36 MRSA §653, sub-§1

§653. Estates of veterans

The following estates of veterans are exempt from taxation: [PL 1973, c. 66, §5 (AMD).]

1. Estates of veterans and servicemen.

A. [PL 1973, c. 66, §6 (RP).]

B. [PL 1973, c. 66, §6 (RP).]

C. The estates up to the just value of \$6,000, having a taxable situs in the place of residence, of veterans who served in the Armed Forces of the United States:

(1) During any federally recognized war period, including the Korean Conflict, the Vietnam War, the Persian Gulf War, the periods from August 24, 1982 to July 31, 1984 and December 20, 1989 to January 31, 1990, Operation Enduring Freedom, Operation Iraqi Freedom and Operation New Dawn, or during the period from February 1, 1955 to February 27, 1961, or who were awarded an expeditionary medal for service in the Armed Forces of the United States, when they have reached the age of 62 years or when they are receiving any form of pension or compensation from the United States Government for total disability, service-connected or nonservice-connected, as a veteran. A veteran of the Vietnam War must have served on active duty after February 27, 1961 and before May 8, 1975. "Persian Gulf War" means service on active duty on or after August 2, 1990 and before or on the date that the United States Government recognizes as the end of that war period; or

(2) Who are disabled by injury or disease incurred or aggravated during active military service in the line of duty and are receiving any form of pension or compensation from the United States Government for total, service-connected disability.

The exemptions provided in this paragraph apply to the property of that veteran, including property held in joint tenancy with that veteran's spouse or held in a revocable living trust for the benefit of that veteran. [PL 2023, c. 441, Pt. B, §1 (AMD); PL 2023, c. 441, Pt. B, §7 (AFF).]

C-1. The estates up to the just value of \$7,000, having a taxable situs in the place of residence of veterans who served in the Armed Forces of the United States during any federally recognized war period during or before World War I and who would be eligible for an exemption under paragraph C.

The exemption provided in this paragraph is in lieu of any exemption under paragraph C to which the veteran may be eligible and applies to the property of that veteran, including property held in joint tenancy with that veteran's spouse or held in a revocable living trust for the benefit of that veteran. [PL 1995, c. 368, Pt. CCC, §2 (AMD); PL 1995, c. 368, Pt. CCC, §11 (AFF).]

D. The estates up to the just value of \$6,000, having a taxable situs in the place of residence, of the unremarried surviving spouse or minor child of any veteran who would be entitled to the exemption if living, or who is in receipt of a pension or compensation from the Federal Government as the surviving spouse or minor child of a veteran.

The estates up to the just value of \$6,000, having a taxable situs in the place of residence, of the parent of a deceased veteran who is 62 years of age or older and is an unremarried surviving spouse who is in receipt of a pension or compensation from the Federal Government based upon the service-connected death of that parent's child.

The exemptions provided in this paragraph apply to the property of an unremarried surviving spouse or minor child or parent of a deceased veteran, including property held in a revocable living trust for the benefit of that unremarried surviving spouse or minor child or parent of a deceased veteran. [PL 2025, c. 113, Pt. D, §16 (AMD).]

D-1. The estates up to the just value of \$50,000, having a taxable situs in the place of residence, for specially adapted housing units, of veterans who served in the Armed Forces of the United States during any federally recognized war period, including the Korean Conflict, the Vietnam War, the Persian Gulf War, the periods from August 24, 1982 to July 31, 1984 and December 20, 1989 to January 31, 1990, Operation Enduring Freedom, Operation Iraqi Freedom and Operation New Dawn, or during the period from February 1, 1955 to February 27, 1961, or who were awarded an expeditionary medal for service in the Armed Forces of the United States, and who are veterans as described in 38 United States Code, Section 2101, and who received a grant from the United States Government for any such housing, or of the unremarried surviving spouses of those veterans. A veteran of the Vietnam War must have served on active duty after February 27, 1961 and before May 8, 1975. "Persian Gulf War" means service on active duty on or after August 2, 1990 and before or on the date that the United States Government recognizes as the end of that war period. The exemption provided in this paragraph applies to the property of the veteran including property held in joint tenancy with a spouse or held in a revocable living trust for the benefit of that veteran. [PL 2025, c. 113, Pt. D, §17 (AMD).]

D-2. The estates up to the just value of \$7,000, having a taxable situs in the place of residence of the unremarried surviving spouse or minor child of any veteran who would be entitled to an exemption under paragraph C-1, if living, or who is in receipt of a pension or compensation from the Federal Government as the surviving spouse or minor child of a veteran, and who is the unremarried surviving spouse or minor child of a veteran who served during any federally recognized war period during or before World War I.

The exemption provided in this paragraph is in lieu of any exemption under paragraph D to which the person may be eligible and applies to the property of that person, including property held in a revocable living trust for the benefit of that person. [PL 2025, c. 113, Pt. D, §18 (AMD).]

D-3. The estates up to the just value of \$7,000, having a taxable situs in the place of residence of the parent of a deceased veteran who is 62 years of age or older and is an unremarried surviving spouse who is in receipt of a pension or compensation from the Federal Government based upon the service-connected death of that parent's child and who is receiving the pension or compensation from the Federal Government based upon the service-connected death of the parent's child during any federally recognized war period during or before World War I.

The exemption provided in this paragraph is in lieu of any exemption under paragraph D to which the person may be eligible and applies to the property of that person, including property held in a revocable living trust for the benefit of that person. [PL 2025, c. 113, Pt. D, §19 (AMD).]

E. The word "veteran" as used in this subsection means an individual who was on active duty in the Armed Forces of the United States and who, if discharged, retired or separated from the Armed Forces, was discharged, retired or separated under other than dishonorable conditions. [PL 2023, c. 360, Pt. A, §7 (AMD).]

F. An exemption may not be granted to any person under this subsection unless the person is a resident of this State. [PL 2007, c. 627, §21 (RPR).]

G. Any person who desires to secure exemption under this subsection shall make written application and file written proof of entitlement on or before the first day of April, in the year in which the exemption is first requested, with the assessors of the place in which the person resides. Notwithstanding Title 1, chapter 13, an application and proof of entitlement filed pursuant to this paragraph is confidential and may not be made available for public inspection. The application and proof of entitlement must be made available to the State Tax Assessor upon request. The assessors shall thereafter grant the exemption to any person who is so qualified and remains a resident of that place or until they are notified of reason or desire for discontinuance. [PL 2013, c. 546, §8 (AMD).]

H. A municipality granting exemptions under this subsection is entitled to reimbursement from the State of 90% of that portion of the property tax revenue lost as a result of the exemptions that exceeds 3% of the total municipal property tax levy, upon submission of proof in a form satisfactory to the State Tax Assessor. Exemptions granted under this subsection that are reimbursable pursuant to section 661 are not eligible for reimbursement under this paragraph. [PL 2007, c. 627, §22 (AMD).]

I. No property conveyed to any person for the purpose of obtaining exemption from taxation under this subsection may be so exempt, except property conveyed between spouses, and the obtaining of exemption by means of fraudulent conveyance must be punished by a fine of not less than \$100 and not more than 2 times the amount of the taxes evaded by the fraudulent conveyance, whichever amount is greater. [PL 2017, c. 288, Pt. B, §7 (AMD).]

J. An individual is not entitled to property tax exemption under more than one paragraph of this subsection. [PL 2023, c. 360, Pt. A, §8 (AMD).]

K. In determining the local assessed value of the exemption, the assessor shall multiply the amount of the exemption by the ratio of current just value upon which the assessment is based as furnished in the assessor's annual return to the State Tax Assessor. [PL 1975, c. 550, §4 (AMD).]

[PL 2025, c. 113, Pt. D, §§16-19 (AMD).]

2. Cooperative housing corporations. A cooperative housing corporation is entitled to an exemption to be applied against the valuation of property of the corporation that is occupied by qualifying shareholders. An application for exemption must include a list of all qualifying shareholders and any information required by the municipality to verify eligibility of qualifying shareholders and the applicable exemption amount. The application must be updated annually to reflect changes in eligibility. The exemption is equal to the total amount calculated under subsection 1 as if the qualifying shareholders were owners of the property. A cooperative housing corporation that receives an exemption pursuant to this section shall apportion the property tax reduction resulting from the exemption among the qualifying shareholders according to the proportion of the total exemption that each qualifying shareholder would be entitled to if the qualifying shareholder were the owner of property. Any supplemental assessment resulting from disqualification for exemption must be applied in the same manner against the qualifying shareholders for whom the disqualification applies. For the purposes of this subsection, the following terms have the following meanings.

A. "Cooperative housing corporation" means an entity organized for the purpose of owning residential real estate in which residents own shares that entitle them to inhabit a designated space within a residential dwelling. [PL 2007, c. 418, §1 (NEW).]

B. "Qualifying shareholder" means an individual who is a shareholder in a cooperative housing corporation who would qualify for an exemption under subsection 1 if the individual were the owner of the property. [PL 2023, c. 360, Pt. A, §9 (AMD).]

[PL 2023, c. 360, Pt. A, §9 (AMD).]

3. Discontinuance of exemptions. The exemptions provided in this section are discontinued beginning with property tax years beginning on or after April 1, 2027. [PL 2025, c. 650, Pt. M, §2 (NEW).]

SECTION HISTORY

PL 1967, c. 67, §5 (AMD). PL 1967, c. 144 (AMD). PL 1969, c. 110, §§1,2 (AMD). PL 1969, c. 341 (AMD). PL 1969, c. 590, §67 (AMD). PL 1971, c. 368 (AMD). PL 1971, c. 544, §122A (AMD). PL 1973, c. 66, §§5,6 (AMD). PL 1975, c. 432, §3 (AMD). PL 1975, c. 550, §§1-4 (AMD). PL 1977, c. 407 (AMD). PL 1977, c. 569, §§1-3 (AMD). PL 1981, c. 133, §§1-4 (AMD). PL 1981, c. 214, §1 (AMD). PL 1981, c. 523, §1 (AMD). PL 1981, c. 698, §179 (AMD). PL 1985, c. 785, §A110 (AMD). PL 1989, c. 501, §Z (AMD). PL 1989, c. 502, §§A127,A128

(AMD). PL 1989, c. 878, §A104 (AMD). RR 1991, c. 2, §132 (COR). PL 1991, c. 824, §A72 (AMD). PL 1993, c. 395, §11 (AMD). PL 1993, c. 427, §§6,7 (AMD). PL 1993, c. 680, §A29 (AMD). PL 1993, c. 739, §§1-3 (AMD). PL 1995, c. 281, §10 (AMD). PL 1995, c. 368, §§CCC1-4 (AMD). PL 1995, c. 368, §CCC11 (AFF). PL 1995, c. 462, §A68 (AMD). PL 1999, c. 462, §§2,3 (AMD). PL 2001, c. 396, §13 (AMD). PL 2003, c. 702, §§1-4 (AMD). PL 2005, c. 519, §MMM1 (AMD). PL 2005, c. 519, §MMM2 (AFF). PL 2005, c. 622, §4 (AMD). PL 2007, c. 240, Pt. PPPP, §§1, 2 (AMD). PL 2007, c. 418, §1 (AMD). PL 2007, c. 437, §7 (AMD). PL 2007, c. 437, §22 (AFF). PL 2007, c. 627, §§21, 22 (AMD). PL 2013, c. 222, §1 (AMD). PL 2013, c. 471, §§1, 2 (AMD). PL 2013, c. 546, §8 (AMD). PL 2015, c. 353, §§1, 2 (AMD). PL 2017, c. 170, Pt. B, §6 (AMD). PL 2017, c. 288, Pt. B, §7 (AMD). PL 2019, c. 501, §§20, 21 (AMD). PL 2021, c. 682, §§1, 2 (AMD). PL 2023, c. 360, Pt. A, §§7-9 (AMD). PL 2023, c. 441, Pt. B, §§1, 2 (AMD). PL 2023, c. 441, Pt. B, §7 (AFF). PL 2025, c. 113, Pt. D, §§16-19 (AMD). PL 2025, c. 650, Pt. M, §2 (AMD).

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STATUTE: 36 MRSA §653, sub-§1

AGENCY: Maine Revenue Services

RETURN BY: October 9, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



MAINE MUNICIPAL ASSOCIATION **SINCE 1936**

60 Community Drive | Augusta, ME 04330-9486
1-800-452-8786 (in state) | (t) 207-623-8428
(f) 207-624-0129

To: Right to Know Advisory Committee, Exceptions Sub-committee
From: Amanda Campbell, Legislative Advocate, MMA
Re: Responses to Exceptions References Nos. 36, 37 and 39
Date: October 20, 2026
Sent via email to Will.Tew@legislature.maine.gov

Reference #36 – 36 MRS §653, sub-§1 (Exemptions related to the estates of veterans)

Question #1

36 MRS §653, sub-§1-G provides that applications and supporting documents for a property tax exemption available to eligible veterans is confidential. Municipal assessors or assessing agents are the primary local officials tasked with custody of the veteran's exemption application and supporting documentation. In municipalities with an assessing agent, it is likely a town manager/administrator or town clerk who maintains custody. These same officials, unless a community has a specific FOAA officer, would apply the exception to any request received by the municipality. The confidential information included in these application materials may include social security numbers, date of birth, Veterans Administration disability rating documentation, and military discharge records.

While a listing of veteran property taxpayers receiving an exemption is likely to be requested, specific applications and supporting documentation for eligibility are much less likely to be the subject of a FOAA request. A survey of MMA members indicates that a FOAA request for these documents happens very rarely, if ever.

Question #2

Surveyed municipal officials overwhelmingly, although not unanimously, agree that this exception should be continued.

Question #3

36 MRS §653, sub-§1-G is clear that "an application and proof of entitlement filed pursuant to this paragraph is confidential and may not be made available for public inspection."

Municipal officials noted that while the statute is clear, it is still possible to glean exemption level status from a review of the municipal tax commitment book. Although that document would not include personally identifying information such as a social security number or birthday, under the new eligibility levels, anyone could determine a taxpayer's disability rating by the value of their exemption listed. Municipal officials only bring this to the attention of the committee and do not propose further confidentiality measures for municipal-level tax documents.

Question #4

During the second session of the 132nd Legislature, the sections of Title 36 that govern property tax exemptions for certain individuals were amended and consolidated. The application for the homestead exemption, the veterans exemption, and the exemption for persons who are legally blind are now all part of one application.

Newly enacted [36 MRS §684, sub-§6](#) reads:

6. Confidentiality. Notwithstanding Title 1, chapter 13, an application and proof of entitlement filed pursuant to subsection 5 are confidential and may not be made available for public inspection. The application and proof of entitlement must be made available to the bureau by the municipality upon request. (Section 5, referred to in this paragraph, outlines the application process and requirement for proof of entitlement.)

Reference #37 – 36 MRS §841, sub-§2 (Exemptions related to hardship or poverty abatements)

Question #1

36 MRS §841, sub-§2 provides that applications, supporting documents, files and communications relating to an application for a hardship or poverty abatement are confidential. A wide variety of municipal officials could maintain custody of these records, depending on the municipality. Municipal assessors or assessing agents are included in abatement proceedings. General Assistance administrators may also participate. In most communities, it is likely a town manager/administrator who maintains custody although in smaller communities this could be the chair of either a selectboard or board of assessors. These same officials, unless a community has a specific FOAA officer, would apply the exception to any request received by the municipality.

Municipal officials who responded to the survey reported no requests for this type of record.

Question #2

Surveyed municipal officials overwhelmingly, although not unanimously, agree that this exception should be continued.

Question #3

36 MRS §841, sub-§2 is clear that “all applications, information submitted in support of the applications, files and communications relating to an application for abatement and the determination on the application for abatement are confidential.”

Municipal officials noted that while the statutory language is clear, it does not specifically reference the FOAA statute under 1 MRS §402(3), which prompted some survey respondents to express concern regarding the possibility of overlooking the confidential nature of the records as they apply specifically to a FOAA request.

Question #4

Committee members may wish to consider adding the FOAA statute reference to 36 MRS §841, sub-2.

Reference #39 – 36 MRS §6271, sub-§2 (Exemptions related to municipal property tax deferral programs)**Question #1**

36 MRS §6271, sub-§2 provides that applications, supporting documents, files, and communications relating to an application for deferral of taxes are confidential. A wide variety of municipal officials could maintain custody of these records, depending on the municipality. Tax collectors, treasurers, and finance directors would likely take part in any application review process for deferral of taxes. In most communities, it is likely a town manager/administrator who maintains custody, although in smaller communities this could also be the chair of either a selectboard or board of assessors. These same officials, unless a community has a specific FOAA officer, would apply the exception to any request received by the municipality.

Municipal officials who responded to the survey reported no requests for this type of record

Question #2

Surveyed municipal officials overwhelmingly, although not unanimously, agree that this exception should be continued.

Question #3

36 MRS §6271, sub-§2 is clear that “an application, information submitted in support of an application and files and communications relating to an application for deferral of taxes under the program are confidential.”

Municipal officials noted that while the statute language is clear, it does not specifically reference the FOAA statute under 1 MRS §402(3), which prompted some survey respondents to express concern regarding the possibility of overlooking the confidential nature of the records as they apply specifically to a FOAA request.

Question #4

Committee members may wish to consider adding the FOAA statute reference to 36 MRS §6271, sub-2.

Please feel free to contact me with any questions.

acampbell@memun.org



JANET T. MILLS
GOVERNOR

STATE OF MAINE
MAINE REVENUE SERVICES
P.O. BOX 1060
AUGUSTA, MAINE
04332-1060

ADMINISTRATIVE & FINANCIAL SERVICES

ELAINE CLARK
COMMISSIONER

MAINE REVENUE SERVICES

JEROME D. GERARD
EXECUTIVE DIRECTOR

To: Right to Know Advisory Committee
From: Jerome Gerard, Executive Director, Maine Revenue Services (MRS)
Re: Responses to Reference Nos. 32, 33, 36, 37, 39, and 40
Date: October 8, 2026

Reference #32 - 36 M.R.S. § 191

Question 1:

36 M.R.S. § 191, in part, prohibits the disclosure of confidential taxpayer information, unless a specific exception applies. Accordingly, MRS redacts or otherwise excludes confidential information from public record requests. Such confidential information generally includes any information required to be submitted under Title 36 of the Maine Revised Statutes (e.g., tax returns, taxpayer names, addresses, tax liabilities, and other identifiable information). Confidential information includes state and federal tax information filed as part of a Maine state tax return. While MRS staff apply the principles of 36 M.R.S. § 191 on a daily basis to deny unauthorized requests of taxpayer information, MRS estimates that this exception for confidential information is applied approximately only three to four times a month in response to a specific FOAA, administrative, or litigation request.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining confidential information is one of MRS's Statement of Values. The fact that the Internal Revenue Service requires confidentiality when providing the State of Maine federal tax information is further reason to continue this exception for confidential information.

Question 3:

MRS has experienced individual taxpayers submitting FOAA requests for their *own* taxpayer information for which they are already entitled under 36 M.R.S. § 191. Specifically, 36 M.R.S. § 191(2)(A) authorizes MRS to provide a taxpayer, or the taxpayer's representative, any information that the taxpayer has filed with MRS. While 36 M.R.S. § 191 does not specifically reference the FOAA statute, MRS believes it is sufficiently clear that the records covered are intended to be "confidential" for FOAA requests. *See, e.g.,* FOAA Exception Search Tool, available at:

Ref 36

<https://www.mainelegislature.org/legis/foa/> (listing 36 M.R.S. § 191 under “Taxation” exceptions). Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception at this time.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public whose sensitive tax information could be made public.

Question 6:

No further information is necessary for the Advisory Committee’s review.

Reference #33 - 36 M.R.S. § 194-D(4)

Question 1:

36 M.R.S. § 194-D addresses background investigations of “affected persons,” which includes MRS employees and other persons, such as contractors or other State of Maine employees, who have been determined to have access or the substantial possibility of access to federal tax information obtained from MRS. 36 M.R.S. § 194-D(4) provides that the results of the background investigation are exempt from public records requests. MRS estimates that this exception is rarely, if ever, used, as no requests for such information have been made to MRS.

Question 2:

MRS supports the continuation of this exception as this background investigation is also required by published authority by the Internal Revenue Services.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 194-D(4) specifically refers to the FOAA statute under 1 M.R.S. § 402(3), this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be the “affected persons,” as defined in 36 M.R.S. § 194-D.

Question 6:

No further information is necessary for the Advisory Committee's review.

✓ **Reference #36 - 36 M.R.S. § 653(1)**

Question 1:

For property tax purposes, 36 M.R.S. § 653 provides an exemption for qualifying veterans. As part of this exemption, 36 M.R.S. § 653(1) states that an application and proof of entitlement filed for this exemption is confidential and may not be made available for public inspection. MRS is aware of only a single request for such information in 2026.

Question 2:

MRS supports the continuation of this exception for confidential information.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 653(1) specifically refers to the FOAA statute under 1 M.R.S., Chapter 13, this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be qualified veterans, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee's review.

Reference #37 - 36 M.R.S. § 841(2)

Question 1:

For property tax purposes, 36 M.R.S. § 841 provides general abatement procedures for property tax assessors to correct any illegality, error or irregularity in assessment. 36 M.R.S. § 841(2) provides procedures for abatements based on taxpayer hardship or poverty. Taxpayer applications for abatement, information submitted in support of the application, files and communications

relating to such application and the determination on the application for abatement are confidential. *See* 36 M.R.S. § 841(2)(E). MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

MRS has not experienced any issues with applying this exception. While 36 M.R.S. § 841(2) does not expressly reference the FOAA statutes, this language is sufficiently clear that the records covered are intended to be “confidential” for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public who have been granted hardship or poverty abatements, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee’s review.

Reference #39 - 36 M.R.S. § 6271(2)

Question 1:

For property tax purposes, 36 M.R.S. § 6271 provides general information for a property tax deferral program for senior citizens, based on income. As part of this program, 36 M.R.S. § 6271(2) provides that municipalities may publish and release as public information statistical summaries concerning the program as long as the release of the information does not jeopardize the confidentiality of individually identifiable information. *See* 36 M.R.S. § 6271(2)(*flush language*). MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

MRS has not experienced any issues with applying this exception. While 36 M.R.S. § 6271(2) does not explicitly reference the FOAA statutes, this language is sufficiently clear that the records covered are intended to be “confidential” for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public who have been granted property tax deferral, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee’s review.

Reference #40 - 36 M.R.S. § 6760

Question 1:

36 M.R.S., Chapter 917 address the Employment Tax Incremental Financing (ETIF) program. As part of this program, 36 M.R.S. § 6760 provides that certain information is confidential, including (1) records used for designation or approval; (2) records requested confidential or detriment; (3) private records; (4) ETIF program records; (5) creditworthiness records; and (6) confidential financial statements. Statutorily, no new certifications under the ETIF program are permitted after December 31, 2034. MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 6760 specifically refers to the FOAA statute under 1 M.R.S. § 402(3), this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be taxpayers participating in the program and the Department of Economic and Community Development.

Question 6:

No further information is necessary for the Advisory Committee's review.

Reference #37
36 MRSA §841, sub-§2

§841. Abatement procedures

1. Error or mistake. The assessors, either upon written application filed within 185 days from commitment stating the grounds for an abatement or on their own initiative within one year from commitment, may make such reasonable abatement as they consider proper to correct any illegality, error or irregularity in assessment if the taxpayer has complied with section 706-A.

The municipal officers, either upon written application filed after one year but within 3 years from commitment stating the grounds for an abatement or on their own initiative within that time period, may make such reasonable abatement as they consider proper to correct any illegality, error or irregularity in assessment if the taxpayer has complied with section 706-A. The municipal officers may not grant an abatement to correct an error in the valuation of property.

[PL 2017, c. 367, §7 (AMD).]

2. Hardship or poverty. The municipal officers, or the State Tax Assessor for the unorganized territory, within 3 years from commitment, may, on their own knowledge or on written application, make such abatements as they believe reasonable on the real and personal taxes on the primary residence of any person who, by reason of hardship or poverty, is in their judgment unable to contribute to the public charges. The municipal officers, or the State Tax Assessor for the unorganized territory, may extend the 3-year period within which they may make abatements under this subsection.

As used in this subsection, "primary residence" means the home, appurtenant structures necessary to support the home and acreage sufficient to satisfy the minimum lot size as required by the municipality's land use or building permit ordinance or regulations or, in the absence of any municipal minimum lot size requirement, as required by Title 12, section 4807-A.

Municipal officers or the State Tax Assessor for the unorganized territory shall:

A. Provide that any person indicating an inability to pay all or part of taxes that have been assessed because of hardship or poverty be informed of the right to make application under this subsection; [PL 2013, c. 424, Pt. A, §24 (RPR).]

B. Assist individuals in making application for abatement; [PL 2013, c. 424, Pt. A, §24 (RPR).]

C. Make available application forms for requesting an abatement based on hardship or poverty and provide that those forms contain notice that a written decision will be made within 30 days of the date of application; [PL 2013, c. 424, Pt. A, §24 (RPR).]

D. Provide that persons are given the opportunity to apply for an abatement during normal business hours; [PL 2013, c. 424, Pt. A, §24 (RPR).]

E. Provide that all applications, information submitted in support of the application, files and communications relating to an application for abatement and the determination on the application for abatement are confidential. Hearings and proceedings held pursuant to this subsection must be in executive session; [PL 2013, c. 424, Pt. A, §24 (RPR).]

F. Provide to any person applying for abatement under this subsection, notice in writing of their decision within 30 days of application; and [PL 2013, c. 424, Pt. A, §24 (RPR).]

G. Provide that any decision made under this subsection include the specific reason or reasons for the decision and inform the applicant of the right to appeal and the procedure for requesting an appeal. [PL 2013, c. 424, Pt. A, §24 (RPR).]

[PL 2017, c. 273, §1 (AMD).]

3. Inability to pay after 2 years. If after 2 years from the date of assessment a tax collector is satisfied that a tax upon real or personal property committed to the tax collector for collection cannot be collected by reason of the death, absence, poverty, insolvency, bankruptcy or other inability of the person assessed to pay, the tax collector shall notify the municipal officers in writing, under oath, stating

the reason why that tax cannot be collected. The municipal officers, after due inquiry, may abate that tax or any part of the tax.

[PL 2025, c. 113, Pt. D, §37 (AMD).]

4. Surviving relatives of deceased veterans. Notwithstanding failure to comply with section 706-A, the assessors, on written application within one year from the date of commitment, may make such abatement as they think proper for the surviving relative of a veteran who died during the 12-month period preceding the April 1st for which the tax was committed, if the surviving relative would be entitled to the additional exemption under section 683-A, subsection 2, except for the failure of the surviving relative to file a timely application and proof of entitlement as required by section 684. For purposes of this subsection, "surviving relative" is limited to those persons described in section 681, subsection 6, paragraphs A and B.

[PL 2025, c. 650, Pt. M, §17 (RPR).]

5. Certification; record. Whenever an abatement is made, other than by the State Tax Assessor, the abating authority shall certify it in writing to the collector, and that certificate must discharge the collector from further obligation to collect the tax so abated. When the abatement is made, other than an abatement made under subsection 2, a record setting forth the name of the party or parties benefited, the amount of the abatement and the reasons for the abatement must, within 30 days, be made and kept in suitable book form open to the public at reasonable times. A report of the abatement must be made to the municipality at its annual meeting or to the mayor and municipal officers of cities by the first Monday in each March.

[PL 2025, c. 113, Pt. D, §39 (AMD).]

6. Appeals. The decision of a chief assessor of a primary assessing area or the State Tax Assessor shall not be deemed "final agency action" under the Maine Administrative Procedure Act, Title 5, chapter 375.

[PL 1979, c. 73 (NEW).]

7. Assessors defined. For the purposes of this subchapter the word "assessors" includes assessor, chief assessor of a primary assessing area and State Tax Assessor for the unorganized territory.

[PL 2001, c. 396, §15 (AMD).]

8. Approval of the Governor. The State Tax Assessor may abate taxes under this section only with the approval of the Governor or the Governor's designee.

[PL 1999, c. 521, Pt. A, §4 (AMD).]

SECTION HISTORY

PL 1973, c. 66, §15 (AMD). PL 1975, c. 765, §§14-A (AMD). PL 1977, c. 44, §1 (AMD). PL 1977, c. 479, §15 (AMD). PL 1977, c. 509, §16 (RPR). PL 1977, c. 694, §§688-692 (AMD). PL 1979, c. 73 (RPR). PL 1987, c. 70 (AMD). PL 1987, c. 772, §§15,16 (AMD). PL 1989, c. 508, §10 (AMD). PL 1991, c. 16, §1 (AMD). PL 1991, c. 16, §2 (AFF). PL 1993, c. 133, §1 (AMD). PL 1999, c. 521, §A4 (AMD). PL 2001, c. 396, §15 (AMD). PL 2005, c. 169, §1 (AMD). PL 2005, c. 218, §10 (AMD). PL 2011, c. 552, §1 (AMD). PL 2011, c. 624, §1 (AMD). PL 2013, c. 424, Pt. A, §24 (AMD). PL 2015, c. 300, Pt. A, §9 (AMD). PL 2017, c. 273, §1 (AMD). PL 2017, c. 367, §§7, 8 (AMD). PL 2025, c. 113, Pt. D, §§37-39 (AMD). PL 2025, c. 650, Pt. M, §17 (AMD).

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STATUTE: 36 MRSA §841, sub-§2

AGENCY: Maine Revenue Services

RETURN BY: October 9, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



MAINE MUNICIPAL ASSOCIATION **SINCE 1936**

60 Community Drive | Augusta, ME 04330-9486
1-800-452-8786 (in state) | (t) 207-623-8428
(f) 207-624-0129

To: Right to Know Advisory Committee, Exceptions Sub-committee
From: Amanda Campbell, Legislative Advocate, MMA
Re: Responses to Exceptions References Nos. 36, 37 and 39
Date: October 20, 2026
Sent via email to Will.Tew@legislature.maine.gov

Reference #36 – 36 MRS §653, sub-§1 (Exemptions related to the estates of veterans)

Question #1

36 MRS §653, sub-§1-G provides that applications and supporting documents for a property tax exemption available to eligible veterans is confidential. Municipal assessors or assessing agents are the primary local officials tasked with custody of the veteran's exemption application and supporting documentation. In municipalities with an assessing agent, it is likely a town manager/administrator or town clerk who maintains custody. These same officials, unless a community has a specific FOAA officer, would apply the exception to any request received by the municipality. The confidential information included in these application materials may include social security numbers, date of birth, Veterans Administration disability rating documentation, and military discharge records.

While a listing of veteran property taxpayers receiving an exemption is likely to be requested, specific applications and supporting documentation for eligibility are much less likely to be the subject of a FOAA request. A survey of MMA members indicates that a FOAA request for these documents happens very rarely, if ever.

Question #2

Surveyed municipal officials overwhelmingly, although not unanimously, agree that this exception should be continued.

Question #3

36 MRS §653, sub-§1-G is clear that "an application and proof of entitlement filed pursuant to this paragraph is confidential and may not be made available for public inspection."

Municipal officials noted that while the statute is clear, it is still possible to glean exemption level status from a review of the municipal tax commitment book. Although that document would not include personally identifying information such as a social security number or birthday, under the new eligibility levels, anyone could determine a taxpayer's disability rating by the value of their exemption listed. Municipal officials only bring this to the attention of the committee and do not propose further confidentiality measures for municipal-level tax documents.

Question #4

During the second session of the 132nd Legislature, the sections of Title 36 that govern property tax exemptions for certain individuals were amended and consolidated. The application for the homestead exemption, the veterans exemption, and the exemption for persons who are legally blind are now all part of one application.

Newly enacted [36 MRS §684, sub-§6](#) reads:

6. Confidentiality. Notwithstanding Title 1, chapter 13, an application and proof of entitlement filed pursuant to subsection 5 are confidential and may not be made available for public inspection. The application and proof of entitlement must be made available to the bureau by the municipality upon request. (Section 5, referred to in this paragraph, outlines the application process and requirement for proof of entitlement.)

Reference #37 – 36 MRS §841, sub-§2 (Exemptions related to hardship or poverty abatements)

Question #1

36 MRS §841, sub-§2 provides that applications, supporting documents, files and communications relating to an application for a hardship or poverty abatement are confidential. A wide variety of municipal officials could maintain custody of these records, depending on the municipality. Municipal assessors or assessing agents are included in abatement proceedings. General Assistance administrators may also participate. In most communities, it is likely a town manager/administrator who maintains custody although in smaller communities this could be the chair of either a selectboard or board of assessors. These same officials, unless a community has a specific FOAA officer, would apply the exception to any request received by the municipality.

Municipal officials who responded to the survey reported no requests for this type of record.

Question #2

Surveyed municipal officials overwhelmingly, although not unanimously, agree that this exception should be continued.

Question #3

36 MRS §841, sub-§2 is clear that “all applications, information submitted in support of the applications, files and communications relating to an application for abatement and the determination on the application for abatement are confidential.”

Municipal officials noted that while the statutory language is clear, it does not specifically reference the FOAA statute under 1 MRS §402(3), which prompted some survey respondents to express concern regarding the possibility of overlooking the confidential nature of the records as they apply specifically to a FOAA request.

Question #4

Committee members may wish to consider adding the FOAA statute reference to 36 MRS §841, sub-2.

Reference #39 – 36 MRS §6271, sub-§2 (Exemptions related to municipal property tax deferral programs)**Question #1**

36 MRS §6271, sub-§2 provides that applications, supporting documents, files, and communications relating to an application for deferral of taxes are confidential. A wide variety of municipal officials could maintain custody of these records, depending on the municipality. Tax collectors, treasurers, and finance directors would likely take part in any application review process for deferral of taxes. In most communities, it is likely a town manager/administrator who maintains custody, although in smaller communities this could also be the chair of either a selectboard or board of assessors. These same officials, unless a community has a specific FOAA officer, would apply the exception to any request received by the municipality.

Municipal officials who responded to the survey reported no requests for this type of record

Question #2

Surveyed municipal officials overwhelmingly, although not unanimously, agree that this exception should be continued.

Question #3

36 MRS §6271, sub-§2 is clear that “an application, information submitted in support of an application and files and communications relating to an application for deferral of taxes under the program are confidential.”

Municipal officials noted that while the statute language is clear, it does not specifically reference the FOAA statute under 1 MRS §402(3), which prompted some survey respondents to express concern regarding the possibility of overlooking the confidential nature of the records as they apply specifically to a FOAA request.

Question #4

Committee members may wish to consider adding the FOAA statute reference to 36 MRS §6271, sub-2.

Please feel free to contact me with any questions.

acampbell@memun.org



JANET T. MILLS
GOVERNOR

STATE OF MAINE
MAINE REVENUE SERVICES
P.O. BOX 1060
AUGUSTA, MAINE
04332-1060

ADMINISTRATIVE & FINANCIAL SERVICES

ELAINE CLARK
COMMISSIONER

MAINE REVENUE SERVICES

JEROME D. GERARD
EXECUTIVE DIRECTOR

To: Right to Know Advisory Committee
From: Jerome Gerard, Executive Director, Maine Revenue Services (MRS)
Re: Responses to Reference Nos. 32, 33, 36, 37, 39, and 40
Date: October 8, 2026

Reference #32 - 36 M.R.S. § 191

Question 1:

36 M.R.S. § 191, in part, prohibits the disclosure of confidential taxpayer information, unless a specific exception applies. Accordingly, MRS redacts or otherwise excludes confidential information from public record requests. Such confidential information generally includes any information required to be submitted under Title 36 of the Maine Revised Statutes (e.g., tax returns, taxpayer names, addresses, tax liabilities, and other identifiable information). Confidential information includes state and federal tax information filed as part of a Maine state tax return. While MRS staff apply the principles of 36 M.R.S. § 191 on a daily basis to deny unauthorized requests of taxpayer information, MRS estimates that this exception for confidential information is applied approximately only three to four times a month in response to a specific FOAA, administrative, or litigation request.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining confidential information is one of MRS's Statement of Values. The fact that the Internal Revenue Service requires confidentiality when providing the State of Maine federal tax information is further reason to continue this exception for confidential information.

Question 3:

MRS has experienced individual taxpayers submitting FOAA requests for their *own* taxpayer information for which they are already entitled under 36 M.R.S. § 191. Specifically, 36 M.R.S. § 191(2)(A) authorizes MRS to provide a taxpayer, or the taxpayer's representative, any information that the taxpayer has filed with MRS. While 36 M.R.S. § 191 does not specifically reference the FOAA statute, MRS believes it is sufficiently clear that the records covered are intended to be "confidential" for FOAA requests. See, e.g., FOAA Exception Search Tool, available at:

<https://www.mainelegislature.org/legis/foa/> (listing 36 M.R.S. § 191 under “Taxation” exceptions). Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception at this time.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public whose sensitive tax information could be made public.

Question 6:

No further information is necessary for the Advisory Committee’s review.

Reference #33 - 36 M.R.S. § 194-D(4)

Question 1:

36 M.R.S. § 194-D addresses background investigations of “affected persons,” which includes MRS employees and other persons, such as contractors or other State of Maine employees, who have been determined to have access or the substantial possibility of access to federal tax information obtained from MRS. 36 M.R.S. § 194-D(4) provides that the results of the background investigation are exempt from public records requests. MRS estimates that this exception is rarely, if ever, used, as no requests for such information have been made to MRS.

Question 2:

MRS supports the continuation of this exception as this background investigation is also required by published authority by the Internal Revenue Services.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 194-D(4) specifically refers to the FOAA statute under 1 M.R.S. § 402(3), this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be the “affected persons,” as defined in 36 M.R.S. § 194-D.

Question 6:

No further information is necessary for the Advisory Committee's review.

Reference #36 - 36 M.R.S. § 653(1)

Question 1:

For property tax purposes, 36 M.R.S. § 653 provides an exemption for qualifying veterans. As part of this exemption, 36 M.R.S. § 653(1) states that an application and proof of entitlement filed for this exemption is confidential and may not be made available for public inspection. MRS is aware of only a single request for such information in 2026.

Question 2:

MRS supports the continuation of this exception for confidential information.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 653(1) specifically refers to the FOAA statute under 1 M.R.S., Chapter 13, this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be qualified veterans, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee's review.

Reference #37 - 36 M.R.S. § 841(2)

Question 1:

For property tax purposes, 36 M.R.S. § 841 provides general abatement procedures for property tax assessors to correct any illegality, error or irregularity in assessment. 36 M.R.S. § 841(2) provides procedures for abatements based on taxpayer hardship or poverty. Taxpayer applications for abatement, information submitted in support of the application, files and communications

relating to such application and the determination on the application for abatement are confidential. *See* 36 M.R.S. § 841(2)(E). MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

MRS has not experienced any issues with applying this exception. While 36 M.R.S. § 841(2) does not expressly reference the FOAA statutes, this language is sufficiently clear that the records covered are intended to be “confidential” for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public who have been granted hardship or poverty abatements, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee’s review.

Reference #39 - 36 M.R.S. § 6271(2)

Question 1:

For property tax purposes, 36 M.R.S. § 6271 provides general information for a property tax deferral program for senior citizens, based on income. As part of this program, 36 M.R.S. § 6271(2) provides that municipalities may publish and release as public information statistical summaries concerning the program as long as the release of the information does not jeopardize the confidentiality of individually identifiable information. *See* 36 M.R.S. § 6271(2)(*flush language*). MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

MRS has not experienced any issues with applying this exception. While 36 M.R.S. § 6271(2) does not explicitly reference the FOAA statutes, this language is sufficiently clear that the records covered are intended to be “confidential” for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public who have been granted property tax deferral, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee’s review.

Reference #40 - 36 M.R.S. § 6760

Question 1:

36 M.R.S., Chapter 917 address the Employment Tax Incremental Financing (ETIF) program. As part of this program, 36 M.R.S. § 6760 provides that certain information is confidential, including (1) records used for designation or approval; (2) records requested confidential or detriment; (3) private records; (4) ETIF program records; (5) creditworthiness records; and (6) confidential financial statements. Statutorily, no new certifications under the ETIF program are permitted after December 31, 2034. MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 6760 specifically refers to the FOAA statute under 1 M.R.S. § 402(3), this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be taxpayers participating in the program and the Department of Economic and Community Development.

Question 6:

No further information is necessary for the Advisory Committee's review.

Reference #38
36 MRSA §4316, sub-§4

§4316. Receivers of wild blueberries

1. Record keeping required. A shipper or processor who transports or receives wild blueberries shall keep a permanent record of each lot or load of wild blueberries. The record must include the name of the driver of the vehicle used to deliver the wild blueberries, the date of delivery, the delivery point, the total pounds of wild blueberries delivered, the origin of the delivery and, if the origin is a location in the State, the name and address of the grower or seller and the grower's or seller's certificate number if the grower or seller is certified under section 4305.
[PL 2023, c. 18, §9 (AMD).]

2. Inspection of permit required.
[PL 2023, c. 18, §10 (RP).]

2-A. Tracking. Wild blueberries must be uniquely identified during transportation to a receiving facility by the field from which they were harvested.
[PL 2019, c. 222, §5 (NEW); PL 2019, c. 222, §7 (AFF).]

3. Violation; civil. The failure to keep the permanent records of wild blueberries transported or received as required in this section or any other violation of this section is a civil violation punishable by a fine of not more than \$5,000 for a first-time violation and punishable by a fine of not more than \$10,000 when the person is found to have committed a prior civil violation of this section within the prior 5 years.
[PL 2023, c. 18, §11 (AMD).]

3-A. Violation; criminal. A shipper or processor who violates this section when the shipper or processor is found to have committed 2 prior civil violations of this section commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.
[PL 2007, c. 694, §10 (NEW).]

3-B. Strict liability crime. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.
[PL 2007, c. 694, §10 (NEW).]

✓ **4. Audits.** The Wild Blueberry Commission of Maine may request the Department of Agriculture, Conservation and Forestry to conduct, and the department at its own discretion may conduct, an audit of the records of a shipper or a processor for the purpose of ascertaining compliance with this section. The Commissioner of Agriculture, Conservation and Forestry, or a duly authorized agent, has free access, during normal business hours, to all records required to be kept by shippers or processors pursuant to this section and also to shippers' or processors' accounts payable, accounts receivable, records of inventories, actual inventories, records of shipments and such other business records as are needed to ascertain compliance with this section. Any documents inspected or taken by the department in furtherance of the audit functions or any other information collected by the department pursuant to the audit must be kept confidential notwithstanding any provision to the contrary contained in Title 1, chapter 13, subchapter 1. This confidential status does not apply to any documents, records or information that is needed as evidence in any civil or criminal proceeding to enforce any law under this chapter or any other criminal law.
[PL 2019, c. 222, §6 (AMD); PL 2019, c. 222, §7 (AFF).]

SECTION HISTORY

PL 1989, c. 214, §2 (NEW). PL 1989, c. 859, §§2,3 (AMD). PL 1997, c. 511, §24 (AMD). PL 2007, c. 694, §10 (AMD). PL 2011, c. 657, Pt. W, §5 (REV). PL 2019, c. 222, §§4-6 (AMD). PL 2019, c. 222, §7 (AFF). PL 2023, c. 18, §§9-11 (AMD).

STATUTE: 36 MRSA §4316, sub-§4

AGENCY: Department of Agriculture, Conservation and Forestry

RETURN BY: October 9, 2026

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Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Reference #39
36 MRSA §6271, sub-§2

§6760. Confidentiality

The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A: [PL 1995, c. 669, §5 (NEW).]

1. Records used for designation or approval of program. Any record obtained or developed by the commissioner or the State Tax Assessor for designation or approval of an employment tax increment financing program. After receipt by the commissioner or the State Tax Assessor of the application or proposal, a record pertaining to the application or proposal is not considered confidential unless it meets the requirements of subsections 2 to 6; [PL 1995, c. 669, §5 (NEW).]

2. Records requested confidential or causing detriment. Any record obtained or developed by the commissioner or the State Tax Assessor that:

A. A person, which may include a qualified business, to whom the record belongs or pertains has requested be designated confidential; or [PL 1995, c. 669, §5 (NEW).]

B. The commissioner has determined contains information that gives the owner or a user of that information an opportunity to obtain business or competitive advantage over another person who does not have access to the information or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains; [PL 1995, c. 669, §5 (NEW).]
[PL 1995, c. 669, §5 (NEW).]

3. Private records. Any record, including any financial statement or tax return, obtained or developed by the commissioner or the State Tax Assessor, the disclosure of which would constitute an invasion of personal privacy, as determined by the governmental entity in possession of that record or information; [PL 1995, c. 669, §5 (NEW).]

4. Employment tax increment program records. Any record, including any financial statement or tax return, obtained or developed by the commissioner or the State Tax Assessor in connection with any monitoring or servicing activity by the commissioner or the State Tax Assessor that pertains to an employment tax increment program; [PL 1995, c. 669, §5 (NEW).]

5. Creditworthiness records. Any record, including any financial statement or tax return obtained or developed by the commissioner or the State Tax Assessor, containing an assessment by a person not employed by the State of the creditworthiness or financial condition of any person or project; and [PL 1995, c. 669, §5 (NEW).]

6. Confidential financial statements. Any financial statement, if the person to whom the statement belongs or pertains has requested that the record be designated confidential. [PL 1995, c. 669, §5 (NEW).]

SECTION HISTORY

PL 1995, c. 669, §5 (NEW).

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STATUTE: 36 MRSA §6271, sub-§2

AGENCY: Maine Revenue Services

RETURN BY: October 9, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



JANET T. MILLS
GOVERNOR

STATE OF MAINE
MAINE REVENUE SERVICES
P.O. BOX 1060
AUGUSTA, MAINE
04332-1060

ADMINISTRATIVE & FINANCIAL SERVICES

ELAINE CLARK
COMMISSIONER

MAINE REVENUE SERVICES

JEROME D. GERARD
EXECUTIVE DIRECTOR

To: Right to Know Advisory Committee
From: Jerome Gerard, Executive Director, Maine Revenue Services (MRS)
Re: Responses to Reference Nos. 32, 33, 36, 37, 39, and 40
Date: October 8, 2026

Reference #32 - 36 M.R.S. § 191

Question 1:

36 M.R.S. § 191, in part, prohibits the disclosure of confidential taxpayer information, unless a specific exception applies. Accordingly, MRS redacts or otherwise excludes confidential information from public record requests. Such confidential information generally includes any information required to be submitted under Title 36 of the Maine Revised Statutes (e.g., tax returns, taxpayer names, addresses, tax liabilities, and other identifiable information). Confidential information includes state and federal tax information filed as part of a Maine state tax return. While MRS staff apply the principles of 36 M.R.S. § 191 on a daily basis to deny unauthorized requests of taxpayer information, MRS estimates that this exception for confidential information is applied approximately only three to four times a month in response to a specific FOAA, administrative, or litigation request.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining confidential information is one of MRS's Statement of Values. The fact that the Internal Revenue Service requires confidentiality when providing the State of Maine federal tax information is further reason to continue this exception for confidential information.

Question 3:

MRS has experienced individual taxpayers submitting FOAA requests for their *own* taxpayer information for which they are already entitled under 36 M.R.S. § 191. Specifically, 36 M.R.S. § 191(2)(A) authorizes MRS to provide a taxpayer, or the taxpayer's representative, any information that the taxpayer has filed with MRS. While 36 M.R.S. § 191 does not specifically reference the FOAA statute, MRS believes it is sufficiently clear that the records covered are intended to be "confidential" for FOAA requests. *See, e.g.,* FOAA Exception Search Tool, available at:



MAINE MUNICIPAL ASSOCIATION **SINCE 1936**

60 Community Drive | Augusta, ME 04330-9486
1-800-452-8786 (in state) | (t) 207-623-8428
(f) 207-624-0129

To: Right to Know Advisory Committee, Exceptions Sub-committee
From: Amanda Campbell, Legislative Advocate, MMA
Re: Responses to Exceptions References Nos. 36, 37 and 39
Date: October 20, 2026
Sent via email to Will.Tew@legislature.maine.gov

Reference #36 – 36 MRS §653, sub-§1 (Exemptions related to the estates of veterans)

Question #1

36 MRS §653, sub-§1-G provides that applications and supporting documents for a property tax exemption available to eligible veterans is confidential. Municipal assessors or assessing agents are the primary local officials tasked with custody of the veteran's exemption application and supporting documentation. In municipalities with an assessing agent, it is likely a town manager/administrator or town clerk who maintains custody. These same officials, unless a community has a specific FOAA officer, would apply the exception to any request received by the municipality. The confidential information included in these application materials may include social security numbers, date of birth, Veterans Administration disability rating documentation, and military discharge records.

While a listing of veteran property taxpayers receiving an exemption is likely to be requested, specific applications and supporting documentation for eligibility are much less likely to be the subject of a FOAA request. A survey of MMA members indicates that a FOAA request for these documents happens very rarely, if ever.

Question #2

Surveyed municipal officials overwhelmingly, although not unanimously, agree that this exception should be continued.

Question #3

36 MRS §653, sub-§1-G is clear that "an application and proof of entitlement filed pursuant to this paragraph is confidential and may not be made available for public inspection."

Municipal officials noted that while the statute is clear, it is still possible to glean exemption level status from a review of the municipal tax commitment book. Although that document would not include personally identifying information such as a social security number or birthday, under the new eligibility levels, anyone could determine a taxpayer's disability rating by the value of their exemption listed. Municipal officials only bring this to the attention of the committee and do not propose further confidentiality measures for municipal-level tax documents.

Question #4

During the second session of the 132nd Legislature, the sections of Title 36 that govern property tax exemptions for certain individuals were amended and consolidated. The application for the homestead exemption, the veterans exemption, and the exemption for persons who are legally blind are now all part of one application.

Newly enacted [36 MRS §684, sub-§6](#) reads:

6. Confidentiality. Notwithstanding Title 1, chapter 13, an application and proof of entitlement filed pursuant to subsection 5 are confidential and may not be made available for public inspection. The application and proof of entitlement must be made available to the bureau by the municipality upon request. (Section 5, referred to in this paragraph, outlines the application process and requirement for proof of entitlement.)

Reference #37 – 36 MRS §841, sub-§2 (Exemptions related to hardship or poverty abatements)

Question #1

36 MRS §841, sub-§2 provides that applications, supporting documents, files and communications relating to an application for a hardship or poverty abatement are confidential. A wide variety of municipal officials could maintain custody of these records, depending on the municipality. Municipal assessors or assessing agents are included in abatement proceedings. General Assistance administrators may also participate. In most communities, it is likely a town manager/administrator who maintains custody although in smaller communities this could be the chair of either a selectboard or board of assessors. These same officials, unless a community has a specific FOAA officer, would apply the exception to any request received by the municipality.

Municipal officials who responded to the survey reported no requests for this type of record.

Question #2

Surveyed municipal officials overwhelmingly, although not unanimously, agree that this exception should be continued.

Question #3

36 MRS §841, sub-§2 is clear that “all applications, information submitted in support of the applications, files and communications relating to an application for abatement and the determination on the application for abatement are confidential.”

Municipal officials noted that while the statutory language is clear, it does not specifically reference the FOAA statute under 1 MRS §402(3), which prompted some survey respondents to express concern regarding the possibility of overlooking the confidential nature of the records as they apply specifically to a FOAA request.

Question #4

Committee members may wish to consider adding the FOAA statute reference to 36 MRS §841, sub-2.

Reference #39 – 36 MRS §6271, sub-§2 (Exemptions related to municipal property tax deferral programs)**Question #1**

36 MRS §6271, sub-§2 provides that applications, supporting documents, files, and communications relating to an application for deferral of taxes are confidential. A wide variety of municipal officials could maintain custody of these records, depending on the municipality. Tax collectors, treasurers, and finance directors would likely take part in any application review process for deferral of taxes. In most communities, it is likely a town manager/administrator who maintains custody, although in smaller communities this could also be the chair of either a selectboard or board of assessors. These same officials, unless a community has a specific FOAA officer, would apply the exception to any request received by the municipality.

Municipal officials who responded to the survey reported no requests for this type of record

Question #2

Surveyed municipal officials overwhelmingly, although not unanimously, agree that this exception should be continued.

Question #3

36 MRS §6271, sub-§2 is clear that “an application, information submitted in support of an application and files and communications relating to an application for deferral of taxes under the program are confidential.”

Municipal officials noted that while the statute language is clear, it does not specifically reference the FOAA statute under 1 MRS §402(3), which prompted some survey respondents to express concern regarding the possibility of overlooking the confidential nature of the records as they apply specifically to a FOAA request.

Question #4

Committee members may wish to consider adding the FOAA statute reference to 36 MRS §6271, sub-2.

Please feel free to contact me with any questions.

acampbell@memun.org

<https://www.mainelegislature.org/legis/foa/> (listing 36 M.R.S. § 191 under “Taxation” exceptions). Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception at this time.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public whose sensitive tax information could be made public.

Question 6:

No further information is necessary for the Advisory Committee’s review.

Reference #33 - 36 M.R.S. § 194-D(4)

Question 1:

36 M.R.S. § 194-D addresses background investigations of “affected persons,” which includes MRS employees and other persons, such as contractors or other State of Maine employees, who have been determined to have access or the substantial possibility of access to federal tax information obtained from MRS. 36 M.R.S. § 194-D(4) provides that the results of the background investigation are exempt from public records requests. MRS estimates that this exception is rarely, if ever, used, as no requests for such information have been made to MRS.

Question 2:

MRS supports the continuation of this exception as this background investigation is also required by published authority by the Internal Revenue Services.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 194-D(4) specifically refers to the FOAA statute under 1 M.R.S. § 402(3), this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be the “affected persons,” as defined in 36 M.R.S. § 194-D.

relating to such application and the determination on the application for abatement are confidential. *See* 36 M.R.S. § 841(2)(E). MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

MRS has not experienced any issues with applying this exception. While 36 M.R.S. § 841(2) does not expressly reference the FOAA statutes, this language is sufficiently clear that the records covered are intended to be “confidential” for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public who have been granted hardship or poverty abatements, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee’s review.

✓ **Reference #39 - 36 M.R.S. § 6271(2)**

Question 1:

For property tax purposes, 36 M.R.S. § 6271 provides general information for a property tax deferral program for senior citizens, based on income. As part of this program, 36 M.R.S. § 6271(2) provides that municipalities may publish and release as public information statistical summaries concerning the program as long as the release of the information does not jeopardize the confidentiality of individually identifiable information. *See* 36 M.R.S. § 6271(2)(flush language). MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

Question 6:

No further information is necessary for the Advisory Committee's review.

Reference #36 - 36 M.R.S. § 653(1)

Question 1:

For property tax purposes, 36 M.R.S. § 653 provides an exemption for qualifying veterans. As part of this exemption, 36 M.R.S. § 653(1) states that an application and proof of entitlement filed for this exemption is confidential and may not be made available for public inspection. MRS is aware of only a single request for such information in 2026.

Question 2:

MRS supports the continuation of this exception for confidential information.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 653(1) specifically refers to the FOAA statute under 1 M.R.S., Chapter 13, this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be qualified veterans, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee's review.

Reference #37 - 36 M.R.S. § 841(2)

Question 1:

For property tax purposes, 36 M.R.S. § 841 provides general abatement procedures for property tax assessors to correct any illegality, error or irregularity in assessment. 36 M.R.S. § 841(2) provides procedures for abatements based on taxpayer hardship or poverty. Taxpayer applications for abatement, information submitted in support of the application, files and communications

MRS has not experienced any issues with applying this exception. While 36 M.R.S. § 6271(2) does not explicitly reference the FOAA statutes, this language is sufficiently clear that the records covered are intended to be “confidential” for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public who have been granted property tax deferral, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee’s review.

Reference #40 - 36 M.R.S. § 6760

Question 1:

36 M.R.S., Chapter 917 address the Employment Tax Incremental Financing (ETIF) program. As part of this program, 36 M.R.S. § 6760 provides that certain information is confidential, including (1) records used for designation or approval; (2) records requested confidential or detriment; (3) private records; (4) ETIF program records; (5) creditworthiness records; and (6) confidential financial statements. Statutorily, no new certifications under the ETIF program are permitted after December 31, 2034. MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 6760 specifically refers to the FOAA statute under 1 M.R.S. § 402(3), this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be taxpayers participating in the program and the Department of Economic and Community Development.

Question 6:

No further information is necessary for the Advisory Committee's review.

Reference #40
36 MRSA §6760

§6760. Confidentiality

The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A: [PL 1995, c. 669, §5 (NEW).]

1. Records used for designation or approval of program. Any record obtained or developed by the commissioner or the State Tax Assessor for designation or approval of an employment tax increment financing program. After receipt by the commissioner or the State Tax Assessor of the application or proposal, a record pertaining to the application or proposal is not considered confidential unless it meets the requirements of subsections 2 to 6; [PL 1995, c. 669, §5 (NEW).]

2. Records requested confidential or causing detriment. Any record obtained or developed by the commissioner or the State Tax Assessor that:

A. A person, which may include a qualified business, to whom the record belongs or pertains has requested be designated confidential; or [PL 1995, c. 669, §5 (NEW).]

B. The commissioner has determined contains information that gives the owner or a user of that information an opportunity to obtain business or competitive advantage over another person who does not have access to the information or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains; [PL 1995, c. 669, §5 (NEW).]
[PL 1995, c. 669, §5 (NEW).]

3. Private records. Any record, including any financial statement or tax return, obtained or developed by the commissioner or the State Tax Assessor, the disclosure of which would constitute an invasion of personal privacy, as determined by the governmental entity in possession of that record or information; [PL 1995, c. 669, §5 (NEW).]

4. Employment tax increment program records. Any record, including any financial statement or tax return, obtained or developed by the commissioner or the State Tax Assessor in connection with any monitoring or servicing activity by the commissioner or the State Tax Assessor that pertains to an employment tax increment program; [PL 1995, c. 669, §5 (NEW).]

5. Creditworthiness records. Any record, including any financial statement or tax return obtained or developed by the commissioner or the State Tax Assessor, containing an assessment by a person not employed by the State of the creditworthiness or financial condition of any person or project; and [PL 1995, c. 669, §5 (NEW).]

6. Confidential financial statements. Any financial statement, if the person to whom the statement belongs or pertains has requested that the record be designated confidential. [PL 1995, c. 669, §5 (NEW).]

SECTION HISTORY

PL 1995, c. 669, §5 (NEW).

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STATUTE: 36 MRSA §6760

AGENCY: Maine Revenue Services

RETURN BY: October 9, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.



JANET T. MILLS
GOVERNOR

STATE OF MAINE
MAINE REVENUE SERVICES
P.O. BOX 1060
AUGUSTA, MAINE
04332-1060

ADMINISTRATIVE & FINANCIAL SERVICES

ELAINE CLARK
COMMISSIONER

MAINE REVENUE SERVICES

JEROME D. GERARD
EXECUTIVE DIRECTOR

To: Right to Know Advisory Committee
From: Jerome Gerard, Executive Director, Maine Revenue Services (MRS)
Re: Responses to Reference Nos. 32, 33, 36, 37, 39, and 40
Date: October 8, 2026

Reference #32 - 36 M.R.S. § 191

Question 1:

36 M.R.S. § 191, in part, prohibits the disclosure of confidential taxpayer information, unless a specific exception applies. Accordingly, MRS redacts or otherwise excludes confidential information from public record requests. Such confidential information generally includes any information required to be submitted under Title 36 of the Maine Revised Statutes (e.g., tax returns, taxpayer names, addresses, tax liabilities, and other identifiable information). Confidential information includes state and federal tax information filed as part of a Maine state tax return. While MRS staff apply the principles of 36 M.R.S. § 191 on a daily basis to deny unauthorized requests of taxpayer information, MRS estimates that this exception for confidential information is applied approximately only three to four times a month in response to a specific FOAA, administrative, or litigation request.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining confidential information is one of MRS's Statement of Values. The fact that the Internal Revenue Service requires confidentiality when providing the State of Maine federal tax information is further reason to continue this exception for confidential information.

Question 3:

MRS has experienced individual taxpayers submitting FOAA requests for their *own* taxpayer information for which they are already entitled under 36 M.R.S. § 191. Specifically, 36 M.R.S. § 191(2)(A) authorizes MRS to provide a taxpayer, or the taxpayer's representative, any information that the taxpayer has filed with MRS. While 36 M.R.S. § 191 does not specifically reference the FOAA statute, MRS believes it is sufficiently clear that the records covered are intended to be "confidential" for FOAA requests. *See, e.g.,* FOAA Exception Search Tool, available at:

<https://www.mainelegislature.org/legis/foa/> (listing 36 M.R.S. § 191 under “Taxation” exceptions). Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception at this time.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public whose sensitive tax information could be made public.

Question 6:

No further information is necessary for the Advisory Committee’s review.

Reference #33 - 36 M.R.S. § 194-D(4)

Question 1:

36 M.R.S. § 194-D addresses background investigations of “affected persons,” which includes MRS employees and other persons, such as contractors or other State of Maine employees, who have been determined to have access or the substantial possibility of access to federal tax information obtained from MRS. 36 M.R.S. § 194-D(4) provides that the results of the background investigation are exempt from public records requests. MRS estimates that this exception is rarely, if ever, used, as no requests for such information have been made to MRS.

Question 2:

MRS supports the continuation of this exception as this background investigation is also required by published authority by the Internal Revenue Services.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 194-D(4) specifically refers to the FOAA statute under 1 M.R.S. § 402(3), this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be the “affected persons,” as defined in 36 M.R.S. § 194-D.

Question 6:

No further information is necessary for the Advisory Committee's review.

Reference #36 - 36 M.R.S. § 653(1)

Question 1:

For property tax purposes, 36 M.R.S. § 653 provides an exemption for qualifying veterans. As part of this exemption, 36 M.R.S. § 653(1) states that an application and proof of entitlement filed for this exemption is confidential and may not be made available for public inspection. MRS is aware of only a single request for such information in 2026.

Question 2:

MRS supports the continuation of this exception for confidential information.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 653(1) specifically refers to the FOAA statute under 1 M.R.S., Chapter 13, this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be qualified veterans, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee's review.

Reference #37 - 36 M.R.S. § 841(2)

Question 1:

For property tax purposes, 36 M.R.S. § 841 provides general abatement procedures for property tax assessors to correct any illegality, error or irregularity in assessment. 36 M.R.S. § 841(2) provides procedures for abatements based on taxpayer hardship or poverty. Taxpayer applications for abatement, information submitted in support of the application, files and communications

relating to such application and the determination on the application for abatement are confidential. *See* 36 M.R.S. § 841(2)(E). MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

MRS has not experienced any issues with applying this exception. While 36 M.R.S. § 841(2) does not expressly reference the FOAA statutes, this language is sufficiently clear that the records covered are intended to be “confidential” for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public who have been granted hardship or poverty abatements, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee’s review.

Reference #39 - 36 M.R.S. § 6271(2)

Question 1:

For property tax purposes, 36 M.R.S. § 6271 provides general information for a property tax deferral program for senior citizens, based on income. As part of this program, 36 M.R.S. § 6271(2) provides that municipalities may publish and release as public information statistical summaries concerning the program as long as the release of the information does not jeopardize the confidentiality of individually identifiable information. *See* 36 M.R.S. § 6271(2)(*flush language*). MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

MRS has not experienced any issues with applying this exception. While 36 M.R.S. § 6271(2) does not explicitly reference the FOAA statutes, this language is sufficiently clear that the records covered are intended to be “confidential” for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be members of the public who have been granted property tax deferral, municipal officials, and the Maine Municipal Association.

Question 6:

No further information is necessary for the Advisory Committee’s review.

✓ **Reference #40 - 36 M.R.S. § 6760**

Question 1:

36 M.R.S., Chapter 917 address the Employment Tax Incremental Financing (ETIF) program. As part of this program, 36 M.R.S. § 6760 provides that certain information is confidential, including (1) records used for designation or approval; (2) records requested confidential or detriment; (3) private records; (4) ETIF program records; (5) creditworthiness records; and (6) confidential financial statements. Statutorily, no new certifications under the ETIF program are permitted after December 31, 2034. MRS is not aware of any requests for such information.

Question 2:

MRS supports the continuation of this exception for confidential information and maintaining, as there have been no issues to date.

Question 3:

MRS has not experienced any issues with applying this exception. As 36 M.R.S. § 6760 specifically refers to the FOAA statute under 1 M.R.S. § 402(3), this language is sufficiently clear that the records covered are intended to be confidential for FOAA requests. Further, the exception is sufficiently clear in describing the records that are covered.

Question 4:

MRS does not recommend any changes to this exception.

Question 5:

Stakeholders to be consulted if the Advisory Committee is considering proposing an elimination of the exception would be taxpayers participating in the program and the Department of Economic and Community Development.

Question 6:

No further information is necessary for the Advisory Committee's review.