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**Eleventh Annual Report  
of the  
Right to Know Advisory Committee**

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## EXECUTIVE SUMMARY

This is the eleventh annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The 17 members are appointed by the Governor, the Chief Justice of the Supreme Judicial Court, the Attorney General, the President of the Senate and the Speaker of the House of Representatives. More information is available on the Advisory Committee's website, which can be found at <http://legislature.maine.gov/legis/opla/righttoknow.htm>. The Office of Policy and Legal Analysis provides staffing to the Advisory Committee while the Legislature is not in session.

By law, the Advisory Committee must meet at least four times per year. During 2016, the Advisory Committee met on June 22, July 20, August 17, September 14 and October 5. The Advisory Committee established the Public Records Exceptions Subcommittee to assist it in conducting its work. The subcommittee held four meetings and made recommendations to the Advisory Committee. On September 14, 2016, the Advisory Committee held a public hearing to take comments and suggestions about how the Freedom of Access Act is working and how it might be improved, consistent with its goals of giving citizens adequate access to records and meetings of decision making bodies of government.

As in previous annual reports, this report includes a brief summary of the legislative actions taken in response to the Advisory Committee's January 2016 recommendations and a summary of relevant Maine court decisions from 2016 on the freedom of access laws.

For its eleventh annual report, the Advisory Committee makes the following unanimous recommendations:

- Communicate the Advisory Committee's interpretation of 1 M.R.S.A. §402, sub-§3, ¶U, which relates to hazardous materials transported by rail, to the Joint Standing Committee on Judiciary and recommend that the Judiciary Committee draft a bill and hold a public hearing on that bill to elicit public input on public access concerns associated with passage of PL 2015, ch. 161, §3;**
- Communicate to the Joint Standing Committee on Judiciary guidelines for considering proposed legislation relating to the confidentiality of personal information about professional and occupational licensees and applicants;**
- Communicate to the Joint Standing Committee on Health and Human Services potential concerns that the proposed rule of the Maine Center for Disease Control and Prevention appears to limit the scope of information available to the public about threats to public health, including communicable diseases;**
- Enact legislation to clarify that government entities may require advance payment before providing a public record to a requestor;**

- Continue without modification, amend or repeal certain existing public records exceptions enacted after 2004 and before 2013;**
- Communicate with the Joint Standing Committee on Health and Human Services about potential repeal of the Mental Health Homicide, Suicide and Aggravated Assault Review Board;**
- Establish a Technology Subcommittee of the Right to Know Advisory Committee; and**
- Continue discussion of proposals related to the confidentiality of personally-identifiable information under FOAA.**

In 2017, the Right to Know Advisory Committee will continue to discuss the unresolved issues identified in this report and to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access. The Advisory Committee looks forward to another year of activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations included in this report.

## I. INTRODUCTION

This is the eleventh annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The Advisory Committee's authorizing legislation, located at Title 1, section 411, is included in **Appendix A**. Previous annual reports of the Advisory Committee can be found on the Advisory Committee's webpage at [www.maine.gov/legis/opla/righttoknowreportsnew.htm](http://www.maine.gov/legis/opla/righttoknowreportsnew.htm).

The Right to Know Advisory Committee has 17 members. The chair of the Advisory Committee is elected annually by the members. Current Advisory Committee members are as follows.

Sen. David C. Burns Chair	<i>Senate member of Judiciary Committee, appointed by the President of the Senate</i>
Rep. Kimberly Monaghan	<i>House member of Judiciary Committee, appointed by the Speaker of the House</i>
Suzanne Goucher	<i>Representing broadcasting interests, appointed by the Speaker of the House</i>
Stephanie Grinnell	<i>Representing newspaper and other press interests, appointed by the President of the Senate</i>
A.J. Higgins	<i>Representing broadcasting interests, appointed by the President of the Senate</i>
Richard LaHaye	<i>Representing law enforcement interests, appointed by the President of the Senate</i>
Mary-Anne LaMarre	<i>Representing school interests, appointed by the Governor [appointment effective November 14, 2016]</i>
Mary Ann Lynch	<i>Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court</i>
Judy Meyer	<i>Representing newspaper publishers, appointed by the Speaker of the House</i>
Kelly Morgan	<i>Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House</i>
Paul Nicklas	<i>Representing municipal interests, appointed by the Governor [appointment effective September 15, 2016]</i>

Christopher Parr	<i>Representing state government interests, appointed by the Governor</i>
Linda Pistner	<i>Attorney General's designee</i>
Harry Pringle	<i>Representing school interests, appointed by the Governor [term ended November 13, 2016]</i>
Helen Rankin	<i>Representing the public, appointed by the Speaker of the House</i>
Luke Rossignol	<i>Representing the public, appointed by the President of the Senate</i>
William Shorey	<i>Representing county or regional interests, appointed by the President of the Senate</i>
Eric Stout	<i>A member with broad experience in and understanding of issues and costs in multiple areas of information technology, appointed by the Governor</i>

Ms. LaMarre was appointed after the Advisory Committee completed its meetings for 2016; she did not participate in any of the meetings described in this report. Mr. Pringle's term expired on July 10, 2016, but pursuant to 1 MRSA §411, sub-§3, he continued to serve until his successor, Ms. LaMarre, was appointed. The Advisory Committee thanks Mr. Pringle for his many years of service.

The complete membership list of the Advisory Committee, including contact information, is included in **Appendix B**.

## **II. COMMITTEE DUTIES**

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

- ❑ Providing guidance in ensuring access to public records and public proceedings;
- ❑ Serving as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know;
- ❑ Supporting the provision of information about public access to records and proceedings via the Internet;
- ❑ Serving as a resource to support training and education about Maine's freedom of access laws;



- ❑ Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the state of Maine's freedom of access laws and the public's access to public proceedings and records;
- ❑ Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;
- ❑ Examining inconsistencies in statutory language and proposing clarifying standard language; and
- ❑ Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public.

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

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

By law, the Advisory Committee must meet at least four times per year. During 2016, the Advisory Committee met on June 22, July 20, August 17, September 14 and October 5. On September 14, 2016, the Advisory Committee held a public hearing to take comments and suggestions about how the Freedom of Access Act is working and how it might be improved, consistent with its goals of giving citizens adequate access to records and meetings of decision making bodies of government. The Advisory Committee specifically requested testimony on the following topic: *Considering the sensitive nature of certain information held by government entities, how could public access to government meetings and records be improved?* Public notice was provided for each meeting. Each meeting was open to the public and was also accessible through the audio link on the Legislature's webpage.

The Advisory Committee has also established a webpage, which can be found at <http://legislature.maine.gov/legis/opla/righttoknow.htm>. Agendas, meeting materials and summaries of the meetings are available on the webpage.

### **III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES**

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

#### **Hughes Bros., Inc. v. Town of Eddington**

In *Hughes Bros., Inc. v. Town of Eddington*, 2016 ME 13, 130 A.3d 978, Hughes Bros., Inc., a landowner seeking a permit to create a quarry, appealed a Superior Court decision determining that the Town of Eddington conducted a valid executive session for the purpose of consulting with counsel. The landowner sought an injunction directing the town to cease and desist from holding a public vote on a proposed moratorium on quarries, and a declaration that any moratorium that might be approved was void because the town violated open meeting requirements of the Freedom of Access Act (FOAA) by holding a joint executive session of the board of selectmen and planning board. The Maine Supreme Judicial Court held that the boards conducted a valid executive session, invoked for purpose of consulting with legal counsel regarding wording in the proposed moratorium ordinance, and that FOAA does not prohibit municipal boards from holding executive sessions jointly in order to meet with legal counsel about how to comply with the law in carrying out their prospective duties.

In order for an executive session to be valid under FOAA, the following elements must be present: the executive session must be publicly announced; the purpose of the executive session must be permitted by law and described clearly; the executive session must be confined to statutorily authorized matters; it may not include any final approval of any official action; and records must be kept that are adequate for purposes of judicial review if an action is challenged. In this case, the administrative record demonstrated that the Town met its burden to show that all of these elements were present. The executive session was held for the limited and authorized purpose of consulting with counsel to draft a legally sound proposed ordinance for consideration at a later public meeting, and the municipal ordinance was approved after consultation with counsel and public deliberation and vote in a meeting open to the public. Further, the Maine Supreme Judicial Court stated that FOAA contains no prohibition against municipal boards holding joint executive sessions and the mere fact that boards share in the advice of counsel in a combined executive session is not a violation of FOAA.

### **IV. RIGHT TO KNOW ADVISORY COMMITTEE SUBCOMMITTEE**

In prior years, the Right to Know Advisory Committee has divided its workload among various subcommittees that have reported recommendations back to the full Advisory Committee for consideration and action. In 2016, the Advisory Committee utilized only one subcommittee: the Public Records Exceptions Subcommittee. The Public Records Exceptions Subcommittee reviews and evaluates existing exceptions to the definition of public record as required of the

Advisory Committee pursuant to 1 MRSA §433, sub-§2-A. The guidelines in the law require the Advisory Committee to review all public records exceptions enacted after 2004 and before 2013 no later than 2017.

As part of its review, the Subcommittee reached out to state and local bodies for information, comments and suggestions with respect to the relevant public records exceptions administered by that body. All inquiries to the public bodies were coupled with an invitation for a representative of the public body to attend the Subcommittee meeting to provide any additional information or answer questions from the Subcommittee. Review was undertaken in light of the criteria codified at 1 MRSA §434, and, after discussion and a vote, recommendations for either keeping a provision with no modification or otherwise striking or amending the provision were passed along to the full Advisory Committee for a final vote.

*See discussion of Subcommittee's recommendations in Section VII.*

Representative Monaghan was the chair of the Subcommittee and A.J. Higgins, Mary Ann Lynch, Chris Parr, Linda Pistner, Helen Rankin and Eric Stout served as members. As a legislator and the Advisory Committee chair, Senator Burns was an ex officio member. The Subcommittee met during 2015 and on July 20, August 17, September 14 and October 5, 2016. The recommendations of the Subcommittee from its December 1, 2015 meeting were considered by the Advisory Committee this year and are contained in this report. Full summaries of all Subcommittee meetings are available on the Right to Know Advisory Committee's website.

## **V. COMMITTEE PROCESS**

This year, the Right to Know Advisory Committee held five committee meetings. During its meetings, there were several topics discussed by the Advisory Committee that did not result in a recommendation or further action. The discussions of those topics are summarized below.

- *FOAA assistance for indigent members of the public*

The Advisory Committee considered a request from Ken Capron for the development of a mechanism to help provide funds for indigent complainants to bring forward FOAA cases and the possibility of developing a standard court form to help pro se indigent complainants. The Advisory Committee took no action on this topic.

- *FOAA agency time and cost estimates, fee waiver policies and remedies for requesters*

Jack Comart of Maine Equal Justice Partners emailed the Advisory Committee with five suggestions: 1) require agencies to provide an estimate of time and cost for each separate component of a request for information; 2) require agencies to publically post and make available their fee waiver policy; 3) require that agencies grant fee waiver requests based upon reasonable standards; 4) clarify when estimates of time and cost must be provided by the agency; and 5) provide some recourse for requesters of information for agency action that may be arbitrary or capricious.

Staff reviewed current agency FOAA response time requirements, and also noted that while FOAA allows an agency to waive fees under FOAA, there is no requirement that the agency have a fee waiver policy or publicly post such policy. The Advisory Committee took no action on this topic.

- *Criminal History Record Information Act (CHRIA) and the Judicial Branch*

Ms. Meyer suggested that the Advisory Committee should be aware of the Judicial Branch's recent reversal of an October 2015 decision to make case files for dismissed cases confidential within 30 days of judgment. The prior policy had been based on an interpretation of the Criminal History Record Information Act (CHRIA) and an administrative order, which the media challenged. Ms. Meyer stated that she was satisfied with the Judiciary's current policy. There was no interest by members in having further discussion.

- *Social Security numbers in medical files held by the Department of Health and Human Services*

Former member of the House of Representatives, Bradley Moulton, brought a concern to the Advisory Committee about dealings with the Department of Health and Human Services in his capacity as a private attorney. Mr. Moulton explained that those who bring complaints before medical boards make their records public information. His client had to file FOAA requests with the Department of Health and Human Services to access her medical review records. Mr. Moulton's and his client's chief concern was that these records included his client's Social Security number, and that this sensitive information was being treated as a public record. The Advisory Committee discussed confidentiality provisions concerning Social Security numbers and took no action on this topic.

- *Consider legislation to require local boards and committees to record executive sessions and to preserve these records so that they may be legally discoverable if there is a later dispute about either the content or propriety of the discussion held during these sessions*

The Advisory Committee was asked by Rep. Brian Hubbell to consider potential legislation to require local boards and committees to record executive sessions and preserve those records so that they may be legally discoverable in case of a dispute about the content or propriety of the discussion held during these executive sessions. As background, staff reviewed current Maine law regarding open meetings and executive sessions, 1 MRSA §§403, 405 and 407.

Additionally, staff noted that the Maine Supreme Court has held that when the propriety of an executive session is challenged, the burden is on the public body to establish that the executive session was proper.

Rep. Hubbell described his proposal and suggested that the Advisory Committee hear from his constituent, Robert Garland, former Town Councilor for Bar Harbor, who had brought the issue to his attention. Mr. Garland explained his experience with executive sessions and a personnel matter in Bar Harbor. During litigation involving the matter, Mr. Garland noted that what had transpired during the executive sessions was recalled much differently than how he had remembered it.

Mr. Higgins asked if an attorney can be present during an executive session and whether they can request that a transcript be made. Mr. Pringle addressed the question, stating that an individual who is the subject of an executive session has the right to request to be present, have an attorney present and can request that the meeting be public. This also includes the right to have a court reporter present to take a transcript of the proceeding, Mr. Pringle said. Mr. Higgins asked if the transcript would then be considered a public record, to which Mr. Pringle replied that it would not be, as it would be in the possession of that person and that person's attorney, though it could always be released at the prerogative of that individual.

Mr. Pringle acknowledged the concern prompting the proposal but stated that he would be extremely reluctant to have executive sessions recorded. He stated that in his view, coming from his experience in the school board context, the administrative burden of recording and indefinitely keeping these recordings and ensuring their confidentiality into perpetuity outweighed the potential for abuse of executive sessions. He reiterated that the courts place the burden on the agency or public body holding an executive session to justify the propriety of that executive session if there is a legal challenge. A judge would make the determination regarding truthfulness and reliability of participants' recollections.

Garett Corbin, a representative of the Maine Municipal Association, also provided the Advisory Committee a municipal perspective on the issue. Mr. Corbin stated that it is important to balance the law so that the public interest does not outweigh privacy interests. This proposal, he noted, with its focus on municipal meetings, would discriminate against municipalities and local government in a way that is not done elsewhere in FOAA. He referred to the portion of the executive session statute that details what constitutes proper subject matter for an executive session, 1 MRSA §405, sub-§6-A, ¶1, noting that an executive session is only held if an individual's right to privacy or potential damage to reputation is involved. Mr. Corbin stated that making and keeping records of these executive sessions increases the likelihood of inadvertent disclosure of this sensitive information. He added that the law as it currently stands provides a remedy through the court system.

Ms. Lynch noted that executive sessions involve much more than just personnel matters, which seemed to be the focus of the discussion. She asked Mr. Corbin if, in these other contexts, executive sessions were recorded and legally discoverable, would it chill the candor of these municipal discussions? Mr. Corbin agreed that it would, relying on feedback from some municipal representatives that had told him they would not hold executive sessions if this proposal went through.

The Advisory Committee agreed unanimously not to move forward recommending any changes to the current law around executive sessions.

- *Anonymous FOAA requests*

Mr. Parr suggested that the Advisory Committee discuss the extent to which, if at all, an agency can ask the purpose of a FOAA requestor's request. As background, staff provided information on the extent to which, under current law, an agency may ask the purpose of a FOAA requestor's request. Staff shared 1 MRSA §408-A, which provides the general principle that "a person has

the right to inspect and copy any public record”, and further provides that an agency or official “may request clarification concerning which public record or public records are being requested.” Staff continued that while nothing in FOAA prohibits an agency or public body from asking additional questions to a requestor, the requestor is not obligated to provide any other information to the agency and the agency may not discriminate in its response to the request. Staff then directed the Advisory Committee to a handout with a comparison of other states’ public records laws in regard to how they handle requestor identity and purpose.

Mr. Stout noted that often in the context of email requests, a requestor is anonymous by sheer virtue of an obscure email address and not by any intention of anonymity by the requestor. Mr. Pringle offered his opinion that requestors should not be required to give their name or purpose when making a request for public records. Sen. Burns wondered if members thought a change should be made to FOAA to prohibit agencies from asking a requestor’s name or purpose, with several members disagreeing with this suggestion. Mr. LaHaye asked whether there should be a distinction between commercial and noncommercial purposes of requestors. Mr. Higgins shared his view that if a record is open, it should be allowed to be used for whatever purpose the requestor wants. Mr. Pringle shared that the Advisory Committee has wrestled with the commercial/non-commercial distinction in the past, and could never work out how to precisely define the difference between the two. Mr. Parr noted that as a practical matter, even if there were a distinction made, a person could have someone else request a public record for them in order to get around the restriction. He also wondered what the State’s policy would be for what to do with requestor information if collected.

The Advisory Committee voted unanimously to take no action on this topic. Rep. Monaghan noted that if there were major concerns regarding anonymous FOAA requests, such as voiced by Planned Parenthood during the discussion of professional licensing records, then those parties could raise this with their legislators to bring legislation forward in the next legislative session.

- *Maine Warden Service FOAA requests*

The Advisory Committee received requests from Mark Eves, the Speaker of the House of Representatives, and the Maine Freedom of Information Coalition to hold a public meeting about the recent and ongoing dispute between the Portland Press Herald/Maine Sunday Telegram and the Maine Warden Service over the agency’s response to the paper’s FOAA requests. A copy of each request is included in **Appendix C**.

Sen. Burns informed the Advisory Committee that he and Rep. Monaghan met with the Presiding Officers of the Legislature and a representative of the Attorney General’s Office to discuss the best way to proceed. At that meeting it was decided that Sen. Burns and Rep. Monaghan would send a letter to Colin Woodard of the Portland Press Herald and the paper’s attorney, Sigmund Schutz. The letter stated that despite recent requests for a public hearing regarding the issues between the paper and the agency, the Advisory Committee was not a fact finder or arbitrator of disputes and was better suited to discussing and considering policy solutions to problems concerning access to public records. Accordingly, the letter invited input or suggestions for changes in policy or law based on the paper’s recent experiences with the Maine Warden Service.

Staff reviewed all correspondence provided to the Advisory Committee regarding the ongoing dispute between the Portland Press Herald/Maine Sunday Telegram and the Maine Warden Service over the agency's response to the paper's FOAA requests: the letter sent by the Advisory Committee; a July 1st letter from Mr. Schutz to the Warden Service and the Attorney General's Office summarizing the paper's dissatisfaction with the agency response as being untimely and incomplete, as well as conditioned on an unreasonable fee; the Warden Service's response to Mr. Schutz's letter, disputing the characterization of the agency's response; Mr. Schutz's letter responding on behalf of the paper to Sen. Burns' and Rep. Monaghan's request, declining to offer suggestions for changes in the law because the paper does not engage in legislative advocacy and noting that, if the Advisory Committee focuses only on changes in the law, it may overlook related issues of compliance with and enforcement of current law. *See correspondence in Appendix C.*

Rep. Monaghan suggested that the Advisory Committee have a discussion about State agencies' compliance with FOAA to prevent similar disputes from arising again. Sen. Burns disagreed, noting that the law enables aggrieved parties to use the Superior Court to force compliance. Ms. Pistner pointed to the "10 Factors for Estimating Time" document Eric Stout had put together as a helpful development for understanding agencies' response time. Also, she pointed to upcoming training for agencies presented by Brenda Kielty, the Public Access Ombudsman.

Ms. Kielty was invited to address the group. She discussed the training session she provided is for all Executive Branch agency public access officers. The focus of the training was on the process of searching for records. She noted that this is an area in which FOAA is silent, and that searches for electronic records are much different than searches for paper records. The procedure begins with proper record retention, actually searching the records, assembling the records, reviewing the records and, finally, providing access to the requestor. Ms. Kielty noted that Advisory Committee member Mr. Stout provided assistance with the email search portion of the training, which would be offered to each State agency as a follow-up to the initial group meeting.

Ms. Meyer asked if this information was also being provided to the Maine Municipal Association and the Maine School Management Association; Ms. Kielty replied that she provides outreach to those organizations and will continue to do so. The information from the training will need to be customized somewhat to better address the needs of the other public bodies which these organizations represent.

Ms. Meyer raised the idea of the Advisory Committee holding a public hearing, not to delve into the specifics of any dispute, but to look at the bigger picture of how FOAA is working for the public. She noted that the Advisory Committee has been around for ten years and has not held a public hearing. Members raised questions about what the Advisory Committee would seek to do with the information gained from the public hearing, how the meeting would be run in order to elicit the most useful testimony and concerns that the viewpoint of agencies may not be fairly represented. Ms. Kielty said that the idea of the public providing input on FOAA in the larger sense is very timely: FOAA is a dynamic statute and this would be a valuable opportunity to hear how it is working. Ms. Kielty also offered the idea of a summit format, where specific parties

would be invited to provide input to help the focus be more clearly on ways to improve the law and less on the details of individual cases.

The Advisory Committee favored allowing broader public input and agreed to hold a public hearing on September 14, 2016, to solicit feedback on FOAA.

- *Right to Know Advisory Committee Public Hearing*

On September 14, 2016, the Advisory Committee held a public hearing to take comments and suggestions about how the Freedom of Access Act is working and how it might be improved, consistent with its goals of giving citizens adequate access to records and meetings of decision making bodies of government. The Advisory Committee specifically requested testimony on the following topic: *Considering the sensitive nature of certain information held by government entities, how could public access to government meetings and records be improved?* The notice for the hearing also specifically stated that the hearing was not intended as a forum for the resolution of specific complaints about meetings or records. The testimony received and the Advisory Committee's discussion is summarized below.

Dr. Dwight Hines testified that there were no incentives for a public agency to keep an information inventory, resulting in unreasonable delays in providing information in response to public records requests that should be reasonably anticipated and to which the agency should be able to easily respond. Dr. Hines also stated his view that it is a problem that the court system is not covered by FOAA. He testified that public officials were too often turning FOAA requests over to attorneys, causing delays and making it more difficult for the requestor to communicate about the request. He noted that meetings that should be public are not being properly noticed, and that at noticed meetings it is apparent that the members of the public body have already privately had their discussion and made their decision. He opined that the value of the open records law is to get people involved in their government and that he has noticed that community cohesiveness has become a problem in recent decades. After 1975, he noted, there was a decline in community engagement with town government and town councils not acting openly and not creating an inclusive atmosphere. Dr. Hines noted that he has observed public bodies causing unnecessary delays in court proceedings in which a requestor is challenging the public body's response to a public records request under FOAA, with these delays having the effect of running up legal costs for the requestor. He stated his desire that the medical examiner share data. He stated that the State's administrative courts are a dark place regarding governmental transparency. Dr. Hines stated that the public is not currently getting the government transparency it deserves. He noted that civilian review boards of police departments are a positive thing, although they are expensive. Dr. Hines stated that nothing in FOAA requires quality of information. He noted that there was not a spirit of open government, even on the Advisory Committee.

Mr. Stout asked Dr. Hines about agency delays in responding to FOAA requests and their use of technology; Dr. Hines stated that agencies appeared to be afraid of providing information, so they delay, and wondered why it would take so long for agencies to access a database. Dr. Hines cited a "computer mendacity."



Sen. Burns asked if Dr. Hines thought there may be a problem with agency access to technology, to which Dr. Hines replied there was not and that agencies seemed to currently have more than they can actually use. Dr. Hines lamented that there were not incentives to use modern technology such as email, due to public officials' fear of FOAA.

Rep. Monaghan and Sen. Burns acknowledged this concern, each noting that given modern technology and how easy it is to communicate via emails and text messages, it is unfortunate that fear of FOAA is putting some in the position of not being able to efficiently use this technology.

The Advisory Committee also received two pieces of written testimony submitted prior to the public hearing. The testimony received from Lt. Gerald Congdon of the Wells Police Department expressed frustration with the difficulty in navigating what can be released in a FOAA request. Lt. Congdon recommended a flowchart be created to provide an easy to follow reference for public officials in responding to FOAA requests. Testimony from Robin Hadlock Seeley of Pembroke suggested that the law provide guidelines for a reasonable response time for agencies and other public bodies responding to FOAA requests. Ms. Seeley also expressed concern that town officials, both elected and unelected, are unfamiliar with FOAA, including understanding which records are public and what notice is required before a public meeting.

Garrett Corbin of the Maine Municipal Association (MMA) also provided comments at the hearing. With respect to the flowchart suggested by Lt. Congdon, Mr. Corbin noted that this suggestion came about due to outreach efforts by MMA. Having discussed the public hearing with attorneys in the legal department at MMA, who regularly provide information to municipal members in response to legal questions that involve FOAA, Mr. Corbin relayed concerns with the fee amount that can be charged by the municipality or other public body for responding to FOAA requests. The current \$15 per hour rate that can be charged for time spent past the first hour of responding to a FOAA request is very low, especially given that responding to such requests often requires paying for the services of outside attorneys. Mr. Corbin recommended a fee standard that permitted actual costs to be assessed to a requestor, perhaps with some sort of balancing mechanism.

Sen. Burns asked about issues with timeliness of FOAA responses; Mr. Corbin replied that no concerns had been relayed to him. Rep. Monaghan asked Mr. Corbin what he thought of the issue of inadequate FOAA training for municipal officials raised by Ms. Seeley in her testimony. Mr. Corbin replied that FOAA places responsibility for training on the municipalities. MMA tries to help, he stated, but it is ultimately up to the municipality. He expressed doubt about how widespread the issue is. Mr. Stout asked Mr. Corbin about his thoughts and perspective on electronic data retrieval by municipalities in the FOAA context. Mr. Corbin stated that he was unsure, but noted that municipalities face pressures with available staff time due to the tightening of municipal funding. Mr. Parr asked what Mr. Corbin took, if anything, from the low turnout at the public hearing, to which Mr. Corbin speculated that FOAA issues tend to be small and discrete, except for certain issues that get large press coverage, and perhaps there was a lack of media coverage about the public hearing. Mr. Parr noted his surprise that more input was not being provided from the public on how FOAA might work better, given the large media interest in FOAA issues this summer.

Following the public hearing, the Advisory Committee did not receive any additional comments or written testimony.

At its meeting following the public hearing, and at the request of the Advisory Committee, Brenda Kielty provided a framework for evaluating the statute before making any changes. Changing one aspect of FOAA, she noted, can have consequences for other aspects of FOAA as well. Ms. Kielty described her view of the best kind of statute, that it be simple yet elaborated: that is, not too complex yet not so simple as to create ambiguity. Whenever FOAA is made more complex, she pointed out, the administration of the law becomes more complex for every public body in the State. She noted that FOAA is a very practical statute.

A proper analysis of FOAA should entail dissecting each section, interpreting it and deciding based on policy whether it is good or bad, Ms. Kielty stated. She offered to look at any particular portion of FOAA that the Advisory Committee was willing to ask her to.

Sen. Burns stated that, in summary, the Advisory Committee held a public hearing to see if it needed to consider changes to FOAA to recommend to the Legislature, and for whatever reason, had not received a lot of responses. Sen. Burns noted that education and training is very important and suggested that technology issues need to be addressed in order to make sure that the statute is working as it was intended. The Advisory Committee took no further action.

## VI. ACTIONS RELATED TO COMMITTEE RECOMMENDATIONS CONTAINED IN TENTH ANNUAL REPORT

The Right to Know Advisory Committee made two recommendations in its tenth annual report. The legislative actions taken in 2016 as a result of those recommendations are summarized below.

<p><b>Recommendation:</b> Enact legislation authorizing the use of technology to permit remote participation in public proceedings by non-elected members of public bodies</p>	<p><b>Action:</b> A majority of the Judiciary Committee voted “Ought Not to Pass” on the recommendations of the Advisory Committee to authorize the use of technology to permit remote participation in public proceedings contained in LD 1586, <i>Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceeding</i>; however, a minority of the Judiciary Committee proposed an amendment that would have required a governmental entity to adopt a written policy governing remote participation by members that also describes how the policy meets the principles of FOAA. The bill and the amendment were not enacted.</p> <p>The Judiciary Committee also considered another bill related to remote participation in public proceedings, LD 1241, <i>An Act To Increase Government Efficiency</i>, which was carried over from the</p>
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	<p>First Regular Session to the Second Regular Session of the 127th Legislature. As finally enacted, LD 1241 permits the board or commission of each of four State bonding authorities (the Maine Governmental Facilities Authority, the Maine Health and Higher Educational Facilities Authority, the Maine State Housing Authority and the Maine Municipal Bond Bank) to conduct public proceedings with members participating via remote access technology in certain circumstances. LD 1241 was finally enacted as Public Law 2016, chapter 449.</p>
<p><b>Recommendation:</b> Continue without modification 24 of the existing public records exceptions enacted after 2004 and before 2013</p>	<p><b>Action:</b> No action by the Legislature was necessary because the Advisory Committee recommended no changes to the existing public records exceptions that were reviewed.</p>

## VII. RECOMMENDATIONS

In this, its eleventh annual report, the Advisory Committee makes the following recommendations arising from its activities and discussions in 2016.

- Communicate the Advisory Committee’s interpretation of 1 MRSA §402, sub-§3, ¶U, which relates to hazardous materials transported by rail, to the Joint Standing Committee on Judiciary and recommend that the Judiciary Committee draft a bill and hold a public hearing on that bill to elicit public input on public access concerns associated with passage of PL 2015, ch. 161, §3**

At the Judiciary Committee’s request, the Advisory Committee reviewed the public records exception in current law that protects as confidential records provided by a railroad company describing hazardous materials transported by the railroad company that are in the possession of a state or local emergency management agency or law enforcement agency, a fire department or other first responder. *See* 1 MRSA §402, sub-§3, ¶U. The Judiciary Committee’s request was prompted by media articles following enactment of the exception indicating that the public’s access to information about the transportation of crude oil through the State may be limited; the Judiciary Committee expressed its interest in ensuring that the public have an additional opportunity to comment and, if necessary, to recommend changes to current law.

The Advisory Committee discussed the public records exception and agreed that the exception may benefit from additional consideration. The Advisory Committee recommends that the Judiciary Committee consider submitting a committee bill to the First Regular Session of the 128th Legislature so that the current exception may be fully vetted by the Legislature in a manner that allows the most meaningful participation by stakeholders, state and local government entities and other members of the public. The Advisory Committee believes that the current exception is not intended to prevent public access to summary or aggregate information

about the transportation of hazardous materials by rail in the State, particularly crude oil, or to prohibit disclosure of information about spills or discharges of hazardous materials. The Advisory Committee also expressed particular concerns about the current exception in its letter to the Judiciary Committee, including: whether disclosure would disadvantage a business or financial interest and, if so, if that interest substantially outweighs the public interest in disclosure; whether the language of the current exception is too broad; whether the exception should be clarified with regard to the role of Department of Environmental Protection when it receives the records in question; and whether the exception is intended to limit the release of information on a retrospective basis.

*See correspondence in Appendix D.*

**□ Communicate to the Joint Standing Committee on Judiciary guidelines for considering proposed legislation relating to the confidentiality of personal information about professional and occupational licensees and applicants**

During the Second Regular Session of the 127th Legislature, LD 1499, "An Act to Increase the Safety of Social Workers," was enacted and created a new confidentiality provision for social worker licensees' and license applicants' addresses and telephone numbers. In response to suggestions to include other types of licensed professionals in the scope of the confidentiality exception, the Judiciary Committee asked for the Advisory Committee's assistance in developing a uniform policy for all professions and occupations. Under current law, some licensing boards, e.g. nurses, physicians and osteopaths, already make certain licensee information confidential. The Advisory Committee extensively discussed the request to develop comprehensive recommendations for the treatment of personal contact information for professions and occupations regulated by the State.

The Advisory Committee agreed that any uniform policy needs to balance the consumer interests of the public in having access to licensee information with the privacy interests of licensees and license applicants. The public has a legitimate need for access to licensing information to ensure that individuals employed in certain professions and occupations are adequately trained and competent, but licensed professionals also have an interest in privacy and personal safety.

The Advisory Committee recommends (*by a vote of 11-2*) that the Judiciary Committee adhere to an approach that focuses on what categories of personal information about licensees should not be accessible to the public, rather than specifying what licensing information should be public. The Advisory Committee supports the general principle that personal contact information should not be public, similar to the categories at 1 MRSA §402, sub-§3, ¶O that protect public employee personal information. Pursuant to 1 MRSA §402, sub-§3, ¶O, the home addresses, home phone and fax numbers, personal cellphone numbers and home email addresses are confidential. The Advisory Committee recognizes that, in cases in which the licensee or license applicant has only provided a personal address and not a public business address to a licensing board, the personal address should not be kept confidential. The Advisory Committee also discussed the merits of providing licensees and license applicants an approach that would permit individuals to opt-in or affirmatively approve the disclosure of personal contact information or developing a form for use

by the licensing entity that would make public certain information, but would exclude personal information about the individual from being disclosed to the public.

*See correspondence in Appendix D.*

- Communicate to the Joint Standing Committee on Health and Human Services potential concerns that the proposed rule of the Maine Center for Disease Control and Prevention appears to limit the scope of information available to the public about threats to public health, including communicable diseases**

The Advisory Committee discussed proposed Data Release Rule, 10-144 CMR, Ch. 175, of the Department of Health and Human Services, Maine Center for Disease Control and Prevention. The Department stated in its rulemaking fact sheet that the principal reason for adopting the rule is to safeguard “against inappropriate release of directly or indirectly identifiable data . . . to ensure a level of public trust and confidence in the agency’s methods and reasoning for disclosure.” The Department further stated that the rule “formally outlines the Maine CDC policies for the release of health-related data and makes clear to all parties the conditions under which unrestricted and restricted data will be released by the Maine CDC.”

The Advisory Committee appreciated that the proposed rule references the federal Health Insurance Portability and Accountability Act of 1996 and assures that data will be released in accordance with those standards, rules and regulations when applicable. However, the Advisory Committee was concerned that the proposed rule allows the Department to prevent public access to public health data by defining the “denominator” or the “underlying population” so that data becomes “restricted data.” Under the proposed rule, “restricted data” may be released only for research purposes, to carry out statutory or municipal obligations, or “as necessary to carry out the public health functions of the Maine CDC and at the sole discretion of the [Department].” The Advisory Committee expressed concern that the proposed rule effectively enacts new public records exceptions under the Freedom of Access Act that prevent the release of information that may be in the public interest.

The Advisory Committee also considered the scope of the Legislature’s delegation of rulemaking authority under 22 MRSA, §§42 and 824. The Advisory Committee has not developed a recommendation with respect to the existing law and the proposed rule, but asked the Joint Standing Committee on Health and Human Services to consider whether the proposed rule is aligned with the Legislature’s expectations about the availability of public health data.

The Advisory Committee agreed to send a letter to the Joint Standing Committee on Health and Human Services explaining the Advisory Committee’s concerns with the proposed rule and asking the Committee to review the proposed rule and consider whether the personal privacy interest of individuals protected by the rule outweigh the public interest in information about disease outbreaks, given the general policy of openness under FOAA.

*See correspondence in Appendix D.*

**Enact legislation to clarify that government entities may require advance payment before providing a public record to a requestor**

In a recent decision, *Flanders v. State, et. al*, BELSC-CV-15-12 (Me. Super. Ct., Waldo Cty., Aug. 12, 2016), the Superior Court held that FOAA did not permit the Department of Public Safety to require advance payment of copying costs before sending a completed public records request to a requestor. The Advisory Committee discussed the potential impact of the decision and members expressed concern that, if agencies are put in the position of not receiving fees before they release public records, there is no incentive for requestors to pay. The Advisory Committee agreed that it is reasonable for a government entity to request advance payment of fees allowed under FOAA before providing public records to a requestor. Public Access Ombudsman Brenda KIELTY advised the Advisory Committee that she did not believe the court correctly interpreted the statute in this case and that she regularly advises state agencies that requiring advance payment is permitted. Members of the Advisory Committee agreed that the statute was wrongly applied, but expressed concern that other courts might interpret the law similarly in the absence of any clarification to the language.

The Advisory Committee recommends (*by a vote of 10-3*) that 1 MRSA §408-A, sub-§8 be amended to clarify that once the work of preparing a public record for release is finished, an agency may require the requestor to pay any fees before providing the records.

*See recommended legislation in Appendix E.*

**Continue without modification, amend or repeal certain existing public records exceptions enacted after 2004 and before 2013**

The Advisory Committee recommends that the following exceptions enacted after 2004 and before 2013 be continued without modification:

- ◆ Title 1, section 402, subsection 3, paragraph C-1, relating to communications between a constituent and an elected official;
- ◆ Title 1, section 402, subsection 3, paragraph N, relating to social security numbers;
- ◆ Title 1, section 402, subsection 3, paragraph O, relating to personal contact information concerning public employees other than elected officials;
- ◆ Title 1, section 402, subsection 3, paragraph Q, relating to security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events for Department of Corrections or county jail;
- ◆ Title 1, section 1013, subsection 2, relating to the identity of a requestor of Commission on Governmental Ethics and Election Practices opinions;
- ◆ Title 1, section 1013, subsection 3-A, relating to complaint alleging a violation of legislative ethics;

- ◆ Title 1, section 1013, subsection 4, relating to Commission on Governmental Ethics and Election Practices records other than complaints;
- ◆ Title 5, section 1541, subsection 10-B, relating to internal audit working papers of the State Controller;
- ◆ Title 12, section 8005, subsection 1, relating to Social Security numbers, addresses, phone numbers, email addresses of forest landowners owning less than 1,000 acres;
- ◆ Title 12, section 8005, subsection 2, relating to Social Security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs;
- ◆ Title 12, section 8005, subsection 4, relating to forest management information designated confidential by agency furnishing information;
- ◆ Title 12, section 10110, relating to a person's email address submitted as part of the application process for a hunting or fishing license;

*The Advisory Committee considered an amendment to this provision proposed by the Department of Inland Fisheries and Wildlife. The Advisory Committee expressed support for a provision in the amendment that would allow applicants to indicate that they wish for their email address to be confidential; however, the Advisory Committee did not support a provision in the amendment that would allow the Department to use or release all email address for certain purposes. The Advisory Committee communicated its support and concerns in a letter, which is included in **Appendix D**.*

- ◆ Title 12, section 12551-A, subsection 10, relating to smelt dealers reports, including name, location, gear and catch;
- ◆ Title 14, section 6321-A, subsection 4, relating to the financial information disclosed in the course of mediation under the foreclosure mediation program;
- ◆ Title 17-A, section 1176, subsection 1, relating to information that pertains to current address or location of crime victims;
- ◆ Title 17-A, section 1176, subsection 5, relating to request by crime victim for notice of release of defendant;
- ◆ Title 20-A, section 13004, subsection 2-A, relating to complaints, charges and accusations concerning certification and registration of educational personnel;
- ◆ Title 21-A, section 196-A, relating to information contained electronically in the central voter registration system;

- ◆ Title 21-A, section 1003, subsection 3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices;
- ◆ Title 21-A, section 1125, subsection 3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet;
- ◆ Title 22, section 1711-C, subsection 20, relating to hospital records concerning health care information pertaining to an individual;
- ◆ Title 22, section 2153-A, relating to information provided to the Department of Health and Human Services by the U.S. Department of Agriculture and the U.S. Food and Drug Administration that is confidential under federal law;
- ◆ Title 22, section 2425, subsection 8, relating to medical marijuana registry identification cards;
- ◆ Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman;
- ◆ Title 25, section 4202, relating to records and information connected in any way with the work of a critical incident stress management team for law enforcement personnel;
- ◆ Title 29-A, section 1301, subsection 6-A, relating to the social security number of an applicant for a drivers' license or non-driver identification card;
- ◆ Title 29-A, section 2117-A, relating to data collected or retained through use of an automated license plate recognition system;
- ◆ Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in an accident report database;
- ◆ Title 30-A, section 4706, subsection 1, relating to municipal housing authorities;
- ◆ Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee;
- ◆ Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board;
- ◆ Title 32, section 91-B, subsection 1, paragraph B, relating to information about a person receiving emergency medical services as part of an application for credentialing by Emergency Medical Services Board;



- ◆ Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to trauma incidence registry program under Title 32, section 87-B;
- ◆ Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board;
- ◆ Title 34-A, section 11221, subsection 9-A, relating to disclosure of certain sex offender registry information;
- ◆ Title 34-A, section 11221, subsection 13, relating to disclosure of certain sex offender registry information;
- ◆ Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board;

*The Advisory Committee sent a letter to the Health and Human Services Committee informing it that this board has apparently been inactive for several years and asking for further consideration of the Board's role and necessity. See correspondence in **Appendix D**.*

- ◆ Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification;
- ◆ Title 35-A, section 122, subsection 1-B, paragraph G, relating to information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this section or activities in preparation for such sale, lease or use in the context of energy infrastructure corridors;
- ◆ Title 36, section 6271, subsection 2, relating to an application, information submitted in support of an application and files and communications in relation to a municipal property tax deferral program for senior citizens;
- ◆ Title 38, section 580-B, subsection 11, relating to records held by the Department of Environmental Protection or its agents regarding individual auctions administered under the carbon dioxide cap-and-trade program; and
- ◆ Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans.

The Advisory Committee recommends that the following exception be amended.

- ◆ Title 35-A, section 10106, relating to records of the Efficiency Maine Trust and its board.

*See recommended legislation in **Appendix F**.*

The Advisory Committee recommends that the following exception be repealed.

- ◆ Title 1, section 402, subsection 3, paragraph R, relating to social security numbers in possession of Secretary of State.

*The Advisory Committee determined that the exception is redundant because Social Security numbers are not public records under Title 1, section 402, subsection 2, paragraph N.*

*See recommended legislation in **Appendix F**.*

The Advisory Committee recommends that the following exceptions be indefinitely postponed and removed from the review process:

- ◆ Title 1, section 402, subsection 2, paragraph G, relating to committee meetings pertaining to interscholastic sports (*review not necessary because exception is not related to a public record and review is not required by law*);
- ◆ Title 7, section 2321, subsection 3, relating to criminal history records provided by the Commissioner of Agriculture, Conservation and Forestry as part of an application to grow industrial hemp for commercial purposes (*provision repealed by Public Law 2009, chapter 320, section 1*);
- ◆ Title 21-A, section 1125, subsection 2-B, relating to records of individuals who made Clean Elections gubernatorial seed money contributions over the Internet (*provision repealed by Citizen's Initiative*); and
- ◆ Title 24-A, section 2736, subsection 2, relating to insurer rate filings on individual health insurance policies and supporting information in regards to protected health information and descriptions of the amount or terms or conditions or reimbursement in a contract between an insurer and a 3rd party (*review not necessary because it is not a public records exception enacted after 2004 and before 2013*).

#### **Establish a Technology Subcommittee**

During several meetings, the Advisory Committee discussed the impact information technology has on a government entity's ability to respond to requests for public records under FOAA. The intersection of technology with FOAA in prior years led to the addition of a position on the Advisory Committee for a member with expertise in information technology. The Advisory Committee agreed it would benefit from discussing issues involving technology in more detail. By unanimous vote, the Advisory Committee established a technology subcommittee.

**☐ Continue discussion of proposals related to the confidentiality of personally identifiable information under FOAA**

In 2017, the Advisory Committee plans to discuss proposals related to enacting a universal definition and public records exception in FOAA for personally identifiable information, and also consider creating a general disclaimer to put the public on notice that its communications with elected and other public officials may become public records under FOAA.

**VIII. FUTURE PLANS**

In 2017, the Right to Know Advisory Committee will continue to discuss the unresolved issues identified in this report and to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access. The Advisory Committee looks forward to another year of activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations included in this report.



**APPENDIX A**

**Authorizing Legislation: 1 MRSA §411**



**§411. Right To Know Advisory Committee**

**1. Advisory committee established.** The Right To Know Advisory Committee, referred to in this chapter as "the advisory committee," is established to serve as a resource for ensuring compliance with this chapter and upholding the integrity of the purposes underlying this chapter as it applies to all public entities in the conduct of the public's business.

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

- A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the President of the Senate;
- B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House;
- C. One representative of municipal interests, appointed by the Governor;
- D. One representative of county or regional interests, appointed by the President of the Senate;
- E. One representative of school interests, appointed by the Governor;
- F. One representative of law enforcement interests, appointed by the President of the Senate;
- G. One representative of the interests of State Government, appointed by the Governor;
- H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House;
- I. One representative of newspaper and other press interests, appointed by the President of the Senate;
- J. One representative of newspaper publishers, appointed by the Speaker of the House;
- K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House;
- L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House;
- M. The Attorney General or the Attorney General's designee; and
- N. One member with broad experience in and understanding of issues and costs in multiple areas of information technology, including practical applications concerning creation, storage, retrieval and accessibility of electronic records; use of communication technologies to support meetings, including teleconferencing and Internet-based conferencing; databases for records management and reporting; and information technology system development and support, appointed by the Governor.

The advisory committee shall invite the Chief Justice of the Supreme Judicial Court to designate a member of the judicial branch to serve as a member of the committee.

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

- A. Except as provided in paragraph B, members are appointed for terms of 3 years.
- B. Members who are Legislators are appointed for the duration of the legislative terms of office in which they were appointed.

C. Members may serve beyond their designated terms until their successors are appointed.

**4. First meeting; chair.** The Executive Director of the Legislative Council shall call the first meeting of the advisory committee as soon as funding permits. At the first meeting, the advisory committee shall select a chair from among its members and may select a new chair annually.

**5. Meetings.** The advisory committee may meet as often as necessary but not fewer than 4 times a year. A meeting may be called by the chair or by any 4 members.

**6. Duties and powers.** The advisory committee:

A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws;

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

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

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

E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation;

F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released;

G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the



integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations;

H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered;

I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records;

J. Shall review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public; and

K. May undertake other activities consistent with its listed responsibilities.

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

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

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

**10. Report.** By January 15, 2007 and at least annually thereafter, the advisory committee shall report to the Governor, the Legislative Council, the joint standing committee of the Legislature having jurisdiction over judiciary matters and the Chief Justice of the Supreme Judicial Court about the state of the freedom of access laws and the public's access to public proceedings and records.



**APPENDIX B**

**Membership List**



**Right to Know Advisory Committee  
Membership List**

**Appointments by the Governor**

**Christopher Parr** Representing state government interests  
Department of Public Safety  
104 State House Station  
Augusta, ME 04333

**Harry R. Pringle** Representing school interests  
Drummond, Woodsum & MacMahon  
84 Marginal Way, Suite 600  
Portland, ME 04101-2480 (*term ended 11/13/16*)

**Mary-Anne LaMarre** Representing school interests  
406 East Side Trail  
Oakland, ME 04963 (*appointed 11/14/16*)

**Paul Nicklas, Esq.** Representing municipal interests  
67 Pine Street, Apt. 2  
Bangor, ME 04401

**Eric Stout** A member with broad experience in  
State of Maine OIT information technology  
145 State House Station  
Augusta, ME 04333

**Appointments by the President of the Senate**

**Senator David C. Burns** Senate member of the Judiciary Committee  
159 Dodge Road  
Whiting, ME 04691

**Richard LaHaye** Representing law enforcement interests  
Chief, Searsport Police Department  
3 Union Street  
Searsport, ME 04974

**Stephanie Grinnell** Representing the press  
The Republican Journal  
156 High Street  
Belfast, ME 04915

**Luke Rossignol** Representing the public  
Bemis & Rossignol  
1019 State Road  
Mapleton, ME 04757

**William D. Shorey**  
Board of Waldo County Commissioners  
39-B Spring Street  
Belfast, ME 04915

Representing county or regional interests

**A. J. Higgins**  
State House Bureau Chief  
Maine Public Broadcasting  
18 West Street  
Manchester, ME 04351

Representing broadcasting interests

**Appointments by the Speaker of the House**

**Representative Kimberly Monaghan**  
6 Russet Lane  
Cape Elizabeth, ME 04107

House member of the Judiciary Committee

**Helen Rankin**  
84 Sebago Road  
Hiram, ME 04041

Representing the public

**Suzanne Goucher**  
Maine Association of Broadcasters  
69 Sewall Street, Suite 2  
Augusta, ME 04330

Representing broadcasting interests

**Judy Meyer**  
Lewiston Sun Journal  
104 Park Street  
Lewiston, ME 04243-4400

Representing newspaper publishers

**Kelly Morgan**  
90 Loggin Road  
Cape Neddick, ME 04072

Representing a statewide coalition of advocates  
of freedom of access

**Attorney General's Designee**

**Linda Pistner**  
Chief Deputy Attorney General  
6 State House Station  
Augusta, ME 04333-0006

Designee of the Attorney General

**Right to Know Advisory Committee  
Membership List**

**Chief Justice of the Supreme Judicial Court's Designee**

**Mary Ann Lynch**

Member of the Judicial Branch

Government and Media Counsel  
Administrative Office of the Courts  
Maine Judicial Branch  
P.O. Box 4820  
Portland, ME 04112-4820

---

**Staff:**

Craig Nale  
Henry Fouts  
Colleen McCarthy Reid





## **APPENDIX C**

**Correspondence to and from the Advisory Committee  
related to Warden Service consideration of FOAA requests**





STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
SPEAKER'S OFFICE  
AUGUSTA, MAINE 04333-0002  
(207) 287-1300

RCVD JUN 9 16

MARK WESTWOOD EVES  
SPEAKER OF THE HOUSE

June 09, 2016

Office of Policy and Legal Analysis  
Right to Know Advisory Committee  
Maine State Legislature  
13 State House Station  
Augusta, ME 02330

Dear Representative Monaghan and Senator Burns,

As you are undoubtedly aware, on May 8, 2016 the Portland Press Herald published an article entitled "North Woods Lawless" regarding an undercover operation conducted by the Maine Warden Service in Allagash on February 5, 2014.

Contained within the story are a series of allegations regarding the Warden Service's conduct, including charges that the Warden Service hindered or otherwise failed to satisfy Maine Freedom of Access Act (FOAA) information requests submitted by the Maine Sunday Telegram.

These accusations at the very least have created lingering questions and in some cases distrust regarding the Service's established protocol and ability to fulfil FOAA requests.

While bringing these issues to the Inland, Fisheries, and Wildlife (IFW) Legislative Committee was the appropriate first step to start to answer questions raised by the press and community members regarding the Warden Service's undercover investigation in Allagash, the IFW Committee's members do not have jurisdiction over Maine's FOAA policies and procedures.

As such, in order to identify appropriate areas of policy that may need revision to address these and other concerns, I urge the Right to Know Committee to hold a public meeting regarding the Maine Warden Service's conduct in fulfilling FOAA requests submitted by the Sunday Telegram.

Your committee has the unique role of working to uphold the integrity of Maine's Freedom of Access Laws. In this role, you are empowered to make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities regarding best practices and necessary changes to the law.

The involvement of the Right to Know Committee is the next logical step in ensuring all government agencies are held appropriately accountable for satisfying our commitment to a transparent state that works for every Mainer.

These are serious allegations raised by the Press Herald and have implications for public trust in the effectiveness and strength of Maine's Freedom of Access Laws. I hope that you will move forward with a public meeting in order to understand if this situation raises the need for any changes to policy or procedure as it relates to FOAA in Maine.

I thank you for acting quickly to address this matter.

Sincerely,



Speaker Mark Eves

Cc:

Senate President Thibodeau  
Representative Barry J. Hobbins (D-Saco)  
Representative Matthew W. Moonen (D-Portland)  
Representative Joyce McCreight (D-Harpswell)  
Representative Charlotte Warren (D-Hallowell)  
Representative Stacey K. Guerin (R-Glenburn)  
Representative Roger L. Sherman (R-Hodgdon)  
Representative Phyllis A. Ginzler (R-Bridgton)  
Representative Lloyd C. Herrick (R-Paris)  
Representative Jeffrey Evangelos (I-Friendship)  
Representative Theodore Bear Mitchell I (Penobscot Nation)  
Senator Amy F. Volk (R-Cumberland)  
Senator Christopher K. Johnson (D-Lincoln)



Maine Freedom of Information Coalition

June 20, 2016

Office of Policy and Legal Analysis  
Right to Know Advisory Committee  
Maine State Legislature  
13 State House Station  
Augusta, ME 02330

Dear Sen. Burns and Representative Monaghan,

On behalf of the Maine Freedom of Information Coalition Board of Directors, I write to join in Speaker Eves' June 9 request that the Right to Know Advisory Committee hold a public hearing regarding the Maine Warden Service's conduct in fulfilling Freedom of Access Act requests submitted by the Maine Sunday Telegram in connection with its report titled "North Woods Lawless," published Feb. 5.

It is our understanding that the RTK Advisory Committee is empowered by statute "to provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws."

As you are aware, there have been a number of questions raised by the newspaper, by members of the public and by lawmakers across Maine about the Warden Service's compliance with FOAA in connection with the newspaper's report on undercover "Operation Red Meat." Your committee has jurisdiction to convene a public hearing to obtain information about these questions, discuss allegations, and consider solutions to problems concerning access to records.

We join with Speaker Eves in his very strong request for RTK to fully hear these concerns to ensure all governmental agencies are held appropriately accountable to the public interest.

Sincerely,

James Campbell, President  
Maine Freedom of Information Coalition

Hon. David C. Burns, Chair  
Hon. Kimberly Monaghan  
Suzanne Goucher  
A. J. Higgins  
Richard LaHaye  
Mary Ann Lynch  
Judy Meyer  
Kelly Morgan



Christopher Parr  
Linda Pistner  
Harry Pringle  
Helen Rankin  
Luke Rossignol  
William Shorey  
Eric Stout

STATE OF MAINE  
**RIGHT TO KNOW ADVISORY COMMITTEE**

June 24, 2016

Sigmund D. Schutz, Esq.  
Preti Flaherty  
One City Center  
Portland, Maine 04101

Colin S. Woodard  
Portland Press Herald/Maine Sunday Telegram  
Mainetoday.com  
One City Center, 5th Floor  
Portland, Maine 04101

**VIA E-MAIL AND USPS MAIL**

Dear Mr. Schutz and Mr. Woodard,

The Right to Know Advisory Committee has been asked to hold a public meeting regarding the conduct of the Maine Warden Service in response to requests for public records made by the Portland Press Herald/Maine Sunday Telegram pursuant to Maine's Freedom of Access Act (FOAA). The primary role of the Right to Know Advisory Committee is to serve as a resource to ensure compliance with FOAA and to uphold the integrity of the purposes underlying FOAA. See 1 MRSA §411, sub-§ 1. The Advisory Committee is not a fact-finding body or an arbiter of a dispute between a government entity and an individual making a request for public records, but may obtain information about, discuss and consider solutions to problems concerning access to public records. The Advisory Committee also has the authority to make recommendations for statutory changes or best practices in providing the public access to records. See 1 MRSA § 411, sub-§6, ¶¶ G and I.

On behalf of the Advisory Committee, we are writing to ask for your input and any suggestions you may have for changes in policy or law or for the development of best practices based on your recent experience with the Maine Warden Service. To date, the Advisory Committee has not been made aware of any specific suggestions for revisions to the FOAA or changes in practices that might improve the process for those seeking access to public records in the future. We are seeking more information about suggested improvements or revisions to existing law.

Without that necessary input, the Advisory Committee is not able to have any meaningful discussion.

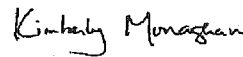
The next meeting of the Advisory Committee is scheduled for Wednesday, July 20, 2016. Please submit any input and suggestions you may have in writing before then. If you have any questions, contact Advisory Committee staff, Craig Nale, Henry Fouts or Colleen McCarthy Reid, in the Office of Policy and Legal Analysis.

Thank you for your consideration.

Sincerely,



Sen. David C. Burns, Chair  
Right to Know Advisory Committee



Rep. Kimberly J. Monaghan  
Right to Know Advisory Committee

cc: Right to Know Advisory Committee  
Brenda L. Kielty, Esq., Public Access Ombudsman

July 1, 2016

VIA EMAIL & U.S. MAIL

Denise M. Brann  
Maine Warden Service  
284 State Street  
41 State House Station  
Augusta, ME 04333-0041

Mark Randlett, Esq.  
Assistant Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, ME 04333-0006

Brenda Kielty, Esq.  
Public Access Ombudsman  
Office of the Attorney General  
6 State House Station  
Augusta, Maine 04333

Re: November 2, 2015 Public Records Request re. North Woods Law

Dear Ms. Brann, Mr. Randlett, and Ms. Kielty:

The Maine Warden Service ("MWS") has failed to provide a timely and complete response to a public records request by the *Portland Press Herald / Maine Sunday Telegram* for correspondence between wardens and the production company responsible for the North Woods Law television show. The request is now eight months old and the response remains far from complete. The MWS has now indicated that it intends to charge thousands of dollars to provide the requested correspondence, far in excess of what Maine law allows for this sort of straightforward request.

I have reviewed the MWS invoice of June 27, 2016, in the amount of \$397.50. I have also reviewed the June 29 invoice for another \$15.00. My client, the *Press Herald*, disputes both invoices, requests a waiver of all further fees, and will not pay any further invoices issued by MWS without advance written approval.

I will explain the background and the basis for our position.

**I. Background**

The MWS allowed the producers of the North Woods Law television program, Engel Entertainment, to film its activities in Maine over the past few years, including activities in Aroostook County.

On November 2, 2015, about eight months ago, *Press Herald* staff writer Colin Woodard made a routine public records request to the MWS for the following:



PRETI FLAHERTY

Denise M. Brann  
Mark Randlett, Esq.  
Brenda Kielty  
July 1, 2016  
Page 2

Copies of all correspondence – including emails and letters – between personnel at the Maine Warden Service and Engel Entertainment, its agents and subsidiaries in regards to potential or actual filming and/or production in Aroostook County. We request only records created between 1 January 2012 and 1 August 2015.

The *Press Herald* later narrowed the date range of the request to August 1, 2013 to August 1, 2015. A number of wardens communicated in writing with Engel personnel on a frequent basis, so numerous responsive documents exist.

Responding to this request should have been a simple task for the MWS. When the MWS worked with Engel staff to pair film crews and producers with wardens engaged in law enforcement activity, the MWS circulated “call sheets,” including a detailed daily log showing exactly who at Engel was working with the MWS, where and when they were working, and with which members of the MWS. A sample call sheet is attached as Exhibit A. The call sheets list the names and email addresses of all Engel personnel involved in filming at any point in time and describe their movements and locations in Aroostook County and elsewhere. To respond to the *Press Herald's* public records request, the MWS simply had to look at the call sheets to see which wardens were working with which Engel personnel on the relevant dates, and then gather and turn over communications between those wardens and Engel. The *Press Herald* was in the dark, until recently, about the existence of the detailed information contained in the call sheets.

When the *Press Herald* made its request for all correspondence between the MWS and Engel personnel related to filming and production in Aroostook County, the MWS knew exactly which wardens would have created responsive documents, because wardens who interacted with Engel in Aroostook County are all listed on the call sheets. The MWS could easily have complied with the *Press Herald's* request – and Maine’s public record law – by instructing its personnel identified on the call sheets to produce all emails sent to or from the addresses of Engel representatives. Identifying the relevant MWS employees would have been a simple task, given that interactions between the MWS and Engel had been precisely documented on the call sheets.

## **II. Initial Response Limited to 1 Warden and 29 Emails**

For months after receiving the *Press Herald's* request, the MWS inexplicably confined its search to the emails of just one employee, Col. John MacDonald. To make matters worse, the MWS chose to search only for documents with the word “Aroostook” or “county” in them. This obviously ineffectual methodology produced just 29 emails.

PRETI FLAHERTY

Denise M. Brann  
Mark Randlett, Esq.  
Brenda Kielty  
July 1, 2016  
Page 3

### **III. The *Press Herald* Protests and Discovers that Many More Wardens Communicated with Engel**

Because the response by the MWS was incomplete and untimely, I filed a complaint on behalf of the *Press Herald* with the ombudsman on January 20. I later filed two more complaints. The MWS eventually revealed that a dozen or so other MWS employees had regularly corresponded with Engel personnel. The MWS suggested, however, that it was incapable of identifying who those Engel personnel were, despite having compiled and circulated call sheets and other materials to an email list of precisely those personnel.

When the *Press Herald* pointed out the obvious – that many Engel personnel used email addresses ending in “@engelentertainment.com,” and that the MWS could simply have searched for those email addresses – the MWS, in consultation with the Ombudsman and then Office of Information Technology (“OIT”), conferred privately and developed a complicated system for conducting those searches, one requiring each warden to travel to a state broadband connection, interact with remote servers at OIT, and move emails to remote folders. It was not clear then and remains unclear why wardens could not simply find their own e-mail responsive to the public records request. The *Press Herald* questioned the necessity and efficacy of such a complex and time-consuming process from the outset.

### **IV. Responsive Documents Are Withheld for No Good Reason**

As part of the search process, OIT provided detailed instructions to the wardens to collect emails from a specific list of Engel personnel – a list they presumably received from senior MWS leadership – and then to cull many of the documents responsive to the *Press Herald*'s request simply because they were not sent from emails ending in “@engelentertainment.com.” In other words, the process the MWS set up features an extra step designed to remove responsive documents that would otherwise have been made public.

Soon after the *Press Herald* received the OIT instructions it also received from Mr. Randlett sample call sheets – the same documents described above – that list names and e-mail addresses for Engel personnel. Most of their e-mail addresses are not “@engelentertainment.com.” I then received a call from Ms. Kielty and Mr. Randlett asking whether the *Press Herald* actually does want what it had asked for eight months ago: that is, all communications. I responded that it does.

### **V. Less than Halfway Complete After Eight Months and a \$400 Charge to Search for a Single E-mail Address.**

It has now become apparent that the MWS intends to charge thousands of dollars to redo its search to correct the errors it made the first time around. This is unacceptable.

PRETI FLAHERTY

Denise M. Brann  
Mark Randlett, Esq.  
Brenda Kielty  
July 1, 2016  
Page 4

The June 26 invoice for \$400 reflects a search for correspondence between MWS personnel and a *single* Engel staff member's "@gmail.com" address. The *Press Herald* had no idea that the charge would be this substantial to find communications with a single e-mail address. Based on that charge, I infer that MWS intends to charge thousands of dollars to search for the dozen or so additional e-mail addresses listed on the call sheets. In addition to the fact that these searches should have been done right the first time, the charges are out of proportion to the actual cost of typing an email address into a database and hitting the enter key. An excessive charge constitutes a de facto denial of access to public records.


## VII. Conclusion

Either the Maine Warden Service is prepared to make its correspondence with persons involved with the North Woods Law television show public, or it is not. The issue now is not what the requested correspondence shows about the conduct of the MWS. Instead, it is the agency's unwillingness to provide a timely and complete response to the *Press Herald's* public records request.

The *Press Herald* disputes the two invoices mentioned above, and requests that further charges be waived because public disclosure of the requested records would contribute to the public understanding of MWS activities. The Legislature's interest in the agency's response to the *Press Herald's* public records request supports a waiver. Whether or not a waiver is granted, the two invoices are excessive and unreasonable, and the *Press Herald* is not willing to pay them, or any additional amounts beyond what it has already paid to get access to the requested public records.

The *Press Herald* simply wants public records to be public, and wants them promptly when it asks for them.

Very truly yours,



Sigmund D. Schutz

SDS:jac

Enclosure

cc: Cliff Schectman, Executive Editor, *Portland Press Herald* (via email)  
Steve Greenlee, Managing Editor, *Portland Press Herald* (via email)  
Colin Woodard, State & National Affairs Writer *Portland Press Herald* (via email)  
Maine Right to Know Advisory Committee (via email)

# engelentertainment

everything but the everyday

<b>CALL SHEET: TEAM 1 SOUTH</b>		<b>"NORTH WOODS LAW"</b>		<b>Saturday, May 31, 2014</b>	
<b>Weather Forecast (5/30/14)</b> Cloudy with a few showers. High around 60F. Winds ENE at 5 – 10 mph. Chance of rain 30%.			<b>Weather Forecast (06/01/14)</b> Sunny, along with a few afternoon clouds. High 67F. Winds ESE at 5 to 10 mph.		
<b>UNIT SCHEDULE:</b>					
<b>END OF DAY SUMMARY</b>			Saturday 5/31 – Sgt. Spahr and Crpl. Mike Joy continue to work on an OGT complaint about a man possessing illegal wild game. Warden Cody Louder preps for the Academy. Warden Pete Herring reflects on and wraps up the search for Jaden.		
<b>FIVE DAY SCHEDULE SUMMARY</b>			Sunday 6/1 – Sgt. Spahr & Crpl. Joy OGT complaint investigation  Monday 6/2 – Wrapping out for the week down / Travel  Tuesday 6/3- Off  Wednesday 6/4- Off  Thursday 6/5 - Off		

**ENGEL ENTERTAINMENT      212-413-9200 OFFICE      212-413-9201 FAX      535 8<sup>th</sup> Ave, 7<sup>th</sup> fl, New York, NY 10018**

Jen Egan	Line Producer	212-413-9205 o	516-807-4729 c	jegan@engelentertainment.com
Molly Corbally	Production Coord.	917-344-7222 o	717-468-2531 c	mcorbally@engelentertainment.com
Jon Goodman	Head of Production	212-413-9207 o	646-239-0222 c	jgoodman@engelentertainment.com

**FIELD CREW**

Andy Seestedt	Supervising Producer		917-301-4180 c	Aseestedt@gmail.com
Neil Ray Sommerlatte	FP	TEAM 1/SOUTH	281-216-4891 c	Nsommerlatte@yahoo.com
Justin Fitzpatrick	DP	TEAM 1/SOUTH	832-746-8234 c	justinkfitz@yahoo.com
Abbey Wells	AP	TEAM 1/SOUTH	860-639-9659 c	wells.abbey@gmail.com
Jay King	AP	TEAM 1/SOUTH	917-324-8883 c	jaychristopherking@gmail.com
Jimmy Collins	MM/PA	TEAM 1/SOUTH	207-749-3489 c	jimmymyfilms@gmail.com
Brad Moore	FP	TEAM 2/WEST	603-545-8500 c	bdmoore15@comcast.net
Ronnie Hernandez	DP	TEAM 2/WEST	646-526-5157 c	rchpictures@earthlink.net
Evan Olmsted	AP	TEAM 2/WEST	207-671-5418 c	eolmsted35@gmail.com
Jimmy Wright	MM/PA	TEAM 2/WEST	716-572-3760 c	Jwright8887@gmail.com

**CAR INFO: AVIS (Sedan) & ENTERPRISE (SUV)**

Portland International Jetport [PWW] Office: 207-875-7500 (AVIS) Office: 207-615-0030 (ENTERPRISE)	1001 Westbrook St Portland, ME 04101 HRS: Sun-Sat 6AM-12:15AM (AVIS) HRS: Mon-Sun 6AM-11:59PM (ENT.)	<b>ROADSIDE ASSISTANCE: AAA</b> <b>1-800-AAA-HELP</b>
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**HOTEL INFO:**

<b>TEAM 1</b> Homewood Suites 200 Southborough Dr Scarborough, ME 04074 207-775-2700	<b>CREW MEMBERS</b> Neil Sommerlatte Justin Fitzpatrick Abbey Wells Jay King Jimmy Collins	<b>ROOM NUMBERS</b> Local Room 203 Room 229 Room 124 Local
--	---	---



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF  
INLAND FISHERIES & WILDLIFE  
284 STATE STREET  
41 STATE HOUSE STATION  
AUGUSTA, ME 04333-0041  
TEL: 207-287-8000

CHANDLER E. WOODCOCK  
COMMISSIONER

July 15, 2016

Sigmund D. Schutz, Esq.  
Preti, Flaherty, Beliveau and Pachios, LLP  
One City Center  
P.O. Box 9546  
Portland, Maine 04112-9546

Dear Attorney Schutz:

This is in response to your July 1, 2016 letter to Denise M. Brann, AAG Mark Randlett and AAG Brenda Kielty regarding the Department of Inland Fisheries and Wildlife's ("IFW") response to the FOAA request from the Portland Press Herald/Maine Sunday Telegram ("PPH") for records relating to correspondence between members of the Warden Service and the production company for Northwoods Law. Your letter contains numerous inaccuracies and IFW disagrees with your assertions that it has been untimely and incomplete in its response. To the contrary, IFW believes it has worked diligently and in good faith to provide every public record requested in a timely manner. Without addressing each point in your letter, much of which we have discussed with you before, we feel it necessary to set the record straight on several issues.

Upon receipt of the initial request IFW immediately responded by having Corporal John MacDonald of the Warden Service search his records. Corporal MacDonald is the Northwoods Law project manager and all significant communications having to do with the production of the show anywhere in the State of Maine would have involved him. Because of the Corporal's high level of involvement with the show, IFW thought this approach was reasonable and adequate to capture all of the responsive documents and, after providing his records, IFW believed the request had been fully satisfied. However, as later communications with you and your client revealed that modifications to the parameters of the search were necessary, we attempted to work with you to develop an approach, including the use of more specific search terms, that would satisfy your client's demands. IFW also consulted with AAGs in the Attorney General's Office and, ultimately, enlisted the assistance of the Maine Office of Information Technology ("OIT").

Since the start of OIT's involvement in mid-March, more than 250 additional documents (e-mails) have been produced, which we believe comprises 95 to 100% of the responsive records. Eric Stout from OIT devised a comprehensive search protocol and worked personally with every IFW staff person determined to be a possible repository for records relating to the FOAA request. Several factors contributed to the time and expense involved in responding to the request, such as a high volume of "raw hits" found during the computer searches (2,949 e-mails) that needed to be reviewed. Of these, most were either duplicative or non-responsive (relating to matters outside the scope of the request). Based on our consultation with OIT, IFW believes the search process used was appropriate because it involved a consistent method that was designed to produce complete results in the most time-efficient manner.

The charges for IFW's response to your client's request, which has been modified on more than one occasion, are reasonable and directly related to the time required to search for, compile, review, redact and produce responsive documents. IFW has provided your client with good faith estimates of these costs at every step. In fact, IFW conducted some searches at no cost to your client and did not charge for many hours that were actually required to conduct others. Further, IFW looked for ways to reduce the time and cost of responding to your client's request. For example, IFW believed the call sheets (mentioned in your letter) had limited informative value and, at our request, AAG's Randlett and Kielty contacted you to determine whether your client really wanted

FISH AND WILDLIFE ON THE WEB!  
[www.maine.gov/ifw](http://www.maine.gov/ifw)

E-MAIL ADDRESS:  
[ifw.webmaster@maine.gov](mailto:ifw.webmaster@maine.gov)



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF  
INLAND FISHERIES & WILDLIFE  
284 STATE STREET  
41 STATE HOUSE STATION  
AUGUSTA, ME 04333-0041  
TEL: 207-287-8000

CHANDLER E. WOODCOCK  
COMMISSIONER

us to go to the time and expense of producing them. What your letter doesn't disclose is that, after reviewing a number of sample call sheets we provided, at your request, your client decided that, in fact, it did not want them.

Your claim that IFW "intends to charge thousands of dollars to provide the requested correspondence" has no grounds. This appears to be related to your client's demand that IFW's search include the personal e-mail addresses of all of the relevant Northwoods Law production company personnel as search terms. You and your client were provided with a document prepared by Mr. Stout, dated June 22, 2016, that shows the estimated time and cost for searching for these emails under four alternative scenarios – the most expensive alternative being \$345 for approximately 23 hours of anticipated work time.

Also incorrect is your assertion that responsive documents have been withheld for no good reason. Every public record that has been located to date has been produced. IFW has only redacted or withheld documents to the extent they contain information that is confidential by law. Further, the search methodology used by IFW and OIT was not designed to exclude responsive documents. Your belief in this regard appears to be related to search instructions from Mr. Stout dated April 6, 2016. However, during searches Mr. Stout observed that some Northwoods Law crew members included in group communications were listed by their personal e-mails and Mr. Stout modified his instructions to account for this. Such e-mails were not "culled" from the documents as you claim, but were included with the records produced. IFW believed, based on its discussions with Mr. Stout, that the global search terms that were used captured most, if not all of the relevant e-mails. However, recognizing that there might be outliers – e-mails where a crew member communicated with an IFW employee using personal e-mail that wasn't captured in a group e-mail – IFW is willing to refine the search to look for those documents. On June 22, 2016 IFW provided an estimate for that search, as discussed above.

In conclusion, IFW takes its FOAA responsibilities seriously and has made a reasonable and good faith effort to meet your client's requests. It will continue to do so.

Sincerely,

Chandler E. Woodcock - Commissioner  
Maine Department of Inland Fisheries & Wildlife

CC: Craig Nale, Henry Fouts, & Colleen McCarthy-Reid  
Office of Policy and Legal Analysis

July 18, 2016

VIA EMAIL AND FIRST-CLASS MAIL

Sen. David C. Burns, Chair  
Right to Know Advisory Committee  
Maine State Senate  
3 State House Station  
Augusta, ME 04333

Rep. Kimberly J. Monaghan  
Right to Know Advisory Committee  
Maine House of Representatives  
2 State House Station  
Augusta, ME 04333

RE: Your Letter of June 24, 2016

Dear Sen. Burns and Rep. Monaghan:

I am responding on behalf of the *Portland Press Herald/Maine Sunday Telegram* to your letter of June 24, 2016 concerning the upcoming meeting of the Right to Know Advisory Committee.

Your letter suggests that the Committee will not be holding a public hearing regarding the conduct of the Maine Warden Service in response to the *Press Herald's* November 2, 2015 request for communications between members of the Warden Service and personnel with the North Woods Law television program. Nonetheless, I previously copied the Committee on the *Press Herald's* July 1, 2016 letter to the Warden Service. That letter outlines the *Press Herald's* position that the Warden Service did not provide a complete or timely response, at reasonable cost, to a straightforward request for public correspondence between state employees and an entertainment company.

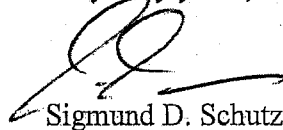
Your letter asks the *Press Herald* to suggest changes to improve the public records law based on its recent experience with the Warden Service. As a news organization, the *Press Herald* does not engage in lobbying. If the Committee focuses only on changes in the law, however, it may overlook related but no less important issues of compliance and enforcement. Are state agencies complying with the law now on the books? Is the law adequately enforced? The newspaper's fundamental concern is simple: it wants public records to be public, and it wants them promptly when asked for.

PRETI FLAHERTY

Sen. David C. Burns, Chair  
Rep. Kimberly J. Monaghan  
July 18, 2016  
Page 2

Although we appreciate your request and acknowledge that the Committee is charged with considering changes in the law, it would be unwise for the newspaper to start to engage in legislative advocacy now. Thank you for contacting us about this important matter.

Very truly yours,



Sigmund D. Schutz

SDS:jac

cc: Henry Fouts (*via email*)  
Craig Nale (*via email*)  
Colleen McCarthy Reid (*via email*)  
Cliff Schectman (*via email*)  
Steve Greenlee (*via email*)  
Colin Woodard (*via email*)



**APPENDIX D**

**Correspondence from the Advisory Committee**



Hon. David C. Burns, Chair  
Hon. Kimberly Monaghan  
Suzanne Goucher  
Stephanie Grinnell  
A. J. Higgins  
Richard LaHaye  
Mary Ann Lynch  
Judy Meyer



Kelly Morgan  
Christopher Parr  
Linda Pistner  
Harry Pringle  
Helen Rankin  
Luke Rossignol  
William Shorey  
Eric Stout

STATE OF MAINE  
**RIGHT TO KNOW ADVISORY COMMITTEE**

September 14, 2016.

Sen. David C. Burns, Senate Chair  
Rep. Barry J. Hobbins, House Chair  
Joint Standing Committee on Judiciary  
100 State House Station  
Augusta, Maine 04333-0100

Dear Sen. Burns and Rep. Hobbins,

At the Judiciary Committee's request, the Right to Know Advisory Committee reviewed the public records exception in current law that protects as confidential records provided by a railroad company describing hazardous materials transported by the railroad company that are in the possession of a state or local emergency management agency or law enforcement agency, a fire department or other first responder. See 1 MRSA §402, sub-§3, ¶U. We understand that your request was prompted by media articles following enactment of the exception indicating that the public's access to information about the transportation of crude oil through the State may be limited and your interest in ensuring that the public have an additional opportunity to comment and, if necessary, to recommend changes to current law.

The Advisory Committee discussed the public records exception and agreed that the exception may benefit from additional consideration. Although the Advisory Committee offers these comments, we recommend that the Judiciary Committee consider submitting a committee bill to the First Regular Session of the 128<sup>th</sup> Legislature so that the current exception may be fully vetted by the Legislature in a manner that allows the most meaningful participation by stakeholders, state and local government entities and other members of the public.

The Advisory Committee believes that the current exception is not intended to prevent public access to summary or aggregate information about the transportation of hazardous materials by rail in the State, particularly crude oil, or to prohibit disclosure of information about spills or discharges of hazardous materials. The Advisory Committee expressed the following concerns about the current exception as written.

- Does public disclosure jeopardize the safety of the public and if so, does that safety interest substantially outweigh the public interest in disclosure of the records?

Letter to Judiciary Committee

Page 2 of 2

Sept. 14, 2016

- Does public disclosure disadvantage a business or financial interest and, if so, does that interest substantially outweigh the public interest in disclosure of the records?
- Is the language of the current exception too broad? Is the proposed exception as narrowly tailored as possible? The current law references records describing hazardous materials transported by rail as defined in 49 Code of Federal Regulations 172.101 and represents a table of more than 150 pages identifying hazardous materials subject to the exception. Related federal regulations in 49 Code of Federal Regulations, Part 172, also describe the record-keeping and record retention requirements for the transportation and shipping of hazardous materials.
- Does the current language need to be clarified? Does the exception apply to records possessed by the Department of Environmental Protection that relate only to its function as a "first responder"? Are records held by the DEP that are collected from railroad companies for other purposes subject to the exception?
- Is the exception intended to limit the release of information on a retrospective basis? How long should information be kept confidential?

We are hopeful that we've provided enough information to assist you in further evaluating this public records exception. Please feel free to contact us or our committee staff if you have any questions or would like additional input.

Thank you for your consideration.

Sincerely,



Sen. David C. Burns, Chair  
Right to Know Advisory Committee

cc: Members, Right to Know Advisory Committee  
Members, Joint Standing Committee on Judiciary  
Margaret Reinsch, Office of Policy and Legal Analysis

Hon. David C. Burns, Chair  
Hon. Kimberly Monaghan  
Suzanne Goucher  
Stephanie Grinnell  
A. J. Higgins  
Richard LaHaye  
Mary Ann Lynch  
Judy Meyer  
Kelly Morgan



Paul Nicklas  
Christopher Parr  
Linda Pistner  
Harry Pringle  
Helen Rankin  
Luke Rossignol  
William Shorey  
Eric Stout

STATE OF MAINE  
**RIGHT TO KNOW ADVISORY COMMITTEE**

September 15, 2016

Sen. David C. Burns, Senate Chair  
Rep. Barry J. Hobbins, House Chair  
Joint Standing Committee on Judiciary  
100 State House Station  
Augusta, Maine 04333-0100

Dear Sen. Burns and Rep. Hobbins,

The Right to Know Advisory Committee has had extensive discussions about your request that the Advisory Committee develop comprehensive recommendations for the treatment of personal contact information for professions and occupations regulated by the State. During the Second Regular Session, the Legislature enacted LD 1499, An Act to Increase the Safety of Social Workers”, which created a new confidentiality provision for social worker licensees’ and license applicants’ addresses and telephone numbers. In response to suggestions to include other types of licensed professionals in the scope of the confidentiality exception, we understand you have asked for the Advisory Committee’s assistance in developing a uniform policy for all professions and occupations. Under current law, some licensing boards, e.g., nurses, physicians and osteopaths, make certain licensee information confidential already.

The Advisory Committee agreed that any uniform policy needs to balance the consumer interests of the public in having access to licensee information with the privacy interests of licensees and license applicants. The public has a legitimate need for access to licensing information to ensure that individuals employed in certain professions and occupations are adequately trained and competent, but licensed professionals also have an interest in privacy and personal safety.

The Advisory Committee recommends *(by a vote of 11-2)* an approach that focuses on what categories of personal information about licensees should not be accessible to the public, rather than specifying what licensing information should be public. The Advisory Committee supports the general principle that personal contact information should not be public, similar to the criteria at 1 MRSA §402, sub-§3, ¶O for protecting public employee personal information. Pursuant to 1 MRSA §402, sub-§3, ¶O, the home addresses, home phone and fax numbers, personal cellphone numbers and home email addresses are confidential. The Advisory Committee recognizes that, in cases in which the licensee or license applicant has only provided a personal address and not a public business address to a licensing board, the personal address should not be kept confidential.

Letter to Judiciary Committee

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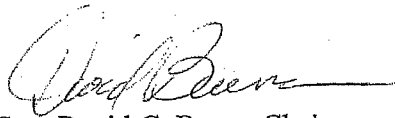
Sept. 15, 2016

The Advisory Committee also discussed the merits of providing licensees and license applicants an approach that would permit individuals to opt-in or affirmatively approve the disclosure of personal contact information or developing a form for use by the licensing entity that would make public certain information, but would exclude personal information about the individual from being disclosed to the public.

We are hopeful that we've provided enough guidance to assist you in evaluating proposed legislation regarding the confidentiality of personal contact information for professional and occupational licensees and applicants for those licenses. Please feel free to contact us or our committee staff if you have any questions or would like additional input.

Thank you for your consideration.

Sincerely,



Sen. David C. Burns, Chair  
Right to Know Advisory Committee

cc: Members, Right to Know Advisory Committee  
Members, Joint Standing Committee on Judiciary  
Margaret Reinsch, Office of Policy and Legal Analysis

Hon. David C. Burns, Chair  
Hon. Kimberly Monaghan  
Suzanne Goucher  
Stephanie Grinnell  
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STATE OF MAINE  
**RIGHT TO KNOW ADVISORY COMMITTEE**

November 17, 2016

Senator Eric Brakey, Chair  
Representative Drew Gattine, Chair  
Health and Human Services Committee  
127th Maine Legislature  
Augusta, ME 04333

Dear Sen. Brakey and Rep. Gattine:

The Right to Know Advisory Committee recently reviewed the Department of Health Human Services' proposed Data Release Rule, 10-144 CMR, Ch. 175, which would affect data held by the Maine Center for Disease Control and Prevention. The Department stated in its rulemaking fact sheet that the principal reason for adopting the rule is to safeguard "against inappropriate release of directly or indirectly identifiable data . . . to ensure a level of public trust and confidence in the agency's methods and reasoning for disclosure." The Department further stated that the rule "formally outlines the Maine CDC policies for the release of health-related data and makes clear to all parties the conditions under which unrestricted and restricted data will be released by the Maine CDC."

The Advisory Committee appreciates that the proposed rule references the Health Insurance Portability and Accountability Act of 1996 and assures that data will be released in accordance with those standards, rules and regulations when applicable. However, the Advisory Committee is concerned that the proposed rule allows the Department to prevent public access to public health data by defining the "denominator" or the "underlying population" so that data becomes "restricted data." Under the proposed rule, "restricted data" may be released only for research purposes, to carry out statutory or municipal obligations, or "as necessary to carry out the public health functions of the Maine CDC and at the sole discretion of the [Department]." The Advisory Committee expressed concern that the proposed rule effectively enacts new public records exceptions under the Freedom of Access Act that prevent the release of information that may be in the public interest.

The Advisory Committee also considered the scope of the Legislature's delegation of rulemaking authority under 22 MRSA, §§ 42 and 824. The Advisory Committee has not developed a recommendation with respect to the existing law and the proposed rule, but asks the Health and

Human Services Committee to consider whether the proposed rule is aligned with the Legislature's expectations about the availability of public health data. We hope you will also consider the balance between the public interest in disease outbreaks and the privacy interest of the affected individuals.

Please feel free to draw upon the resources of the Right to Know Advisory Committee when we meet again in 2018.

Sincerely,



Sen. David C. Burns, Chair  
Right to Know Advisory Committee

cc: Members, Health and Human Services Committee  
Members, Right to Know Advisory Committee



Hon. David C. Burns, Chair  
Hon. Kimberly Monaghan  
Suzanne Goucher  
Stephanie Grinnell  
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STATE OF MAINE  
**RIGHT TO KNOW ADVISORY COMMITTEE**

September 15, 2016

Chandler E. Woodcock, Commissioner  
Department of Inland Fisheries and Wildlife  
41 State House Station  
Augusta, ME 04333

Dear Commissioner Woodcock:

The Right to Know Advisory Committee recently considered a request by the Department of Inland Fisheries and Wildlife to recommend a revision to the language of Title 12, section 10110 of the Maine Revised Statutes. We thank you and your staff for your input; however, we are concerned about the scope of the proposed amendment and feel this matter may be better resolved by the Joint Standing Committee on Inland Fisheries and Wildlife of the Legislature.

The Advisory Committee first sought input from the Department on this provision of law, which pertains to the confidentiality of email addresses submitted to the Department, as part of our annual review of existing public records exceptions. The Department initially supported the continuation of the exception without change, but we sought further guidance about the merits of a blanket confidentiality provision for email addresses versus providing confidentiality only upon request.

The resulting proposed amendment provided confidentiality for email address submitted as part of an application for any license, permit or registration issued by the Department unless the applicant clearly indicated that the email address is not confidential. In addition, the proposed amendment included new exceptions to email confidentiality for contractors or other State agencies performing marketing services for the Department or conducting fish and game management research. A copy of the draft amendment the Advisory Committee considered is attached for your reference.

While we support the default confidentiality of email addresses for license, permit and registration applicants, as well as the possibility of a person indicating that his or her email address is not confidential, we do not feel we have sufficient information or understanding of the scope of the proposed exceptions to make a recommendation on that portion of your proposal.

We hope you will consider submitting a bill to effect changes to this provision to the 128th Legislature.

Sincerely,

A handwritten signature in cursive script, appearing to read 'David C. Burns'.

Sen. David C. Burns, Chair  
Right to Know Advisory Committee

cc: Members, Right to Know Advisory Committee

**Right to Know Advisory Committee  
Subcommittee on Review of Existing Public Records Exceptions**

***DRAFT* Proposed Bill to Implement the Recommendation of the  
Department of Inland Fisheries and Wildlife**

**An Act to Implement Recommendations of the Right to Know Advisory Committee  
Regarding Public Records Exceptions**

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

**Sec. 1. 12 MRSA §10110 is amended to read:**

**§10110. Confidentiality**

**1. Indication of confidentiality.** ~~The commissioner shall allow an applicant for a hunting or fishing license to indicate that the applicant's e-mail address is confidential.~~

**2. Confidential information.** ~~If a person indicates that the A person's e-mail address submitted as part of the application process for a hunting or fishing license, permit or registration issued by the department is confidential as provided in subsection 1, that information is confidential~~ The commissioner may allow a person to clearly indicate that the e-mail address is not confidential.

**3. Exception.** E-mails designated as confidential under this section are not confidential to department personnel or law enforcement officers or for purposes of court proceedings. The department may disclose e-mails designated confidential under this section to a contractor or State agency performing marketing services for the department or conducting fish and game management research.

**SUMMARY**

This bill makes e-mail addresses submitted to the Department of Inland Fisheries and Wildlife in connection with an application for a hunting or fishing license, permit or registration confidential. The Commissioner of Inland Fisheries and Wildlife may allow the applicant to clearly indicate that the e-mail address is not confidential. This bill allows the Department of Inland Fisheries and Wildlife to disclose otherwise confidential emails to a contractor or State agency performing marketing services for the department or conducting fish and game management research.

Hon. David C. Burns, Chair  
Hon. Kimberly Monaghan  
Suzanne Goucher  
Stephanie Grinnell  
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STATE OF MAINE  
**RIGHT TO KNOW ADVISORY COMMITTEE**

November 17, 2016

Senator Eric Brakey, Chair  
Representative Drew Gattine, Chair  
Health and Human Services Committee  
127th Maine Legislature  
Augusta, ME 04333

Dear Sen. Brakey and Rep. Gattine:

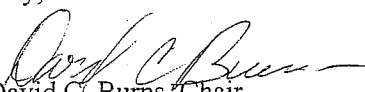
As part of its annual review of existing public records exceptions under the Freedom of Access Act, the Right to Know Advisory Committee recently reviewed a provision of law that makes certain records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board (the "Board") confidential. The Board is established in 22 MRSA §1931, and is tasked with reviewing "homicides, suicides and aggravated assaults involving a person with severe and persistent mental illness . . ." The provision under review, at §1931, sub-§6, makes records of the Board confidential, except that conclusions and recommendations of the Board may be released in a manner that does not identify the parties, victims or witnesses.

The Right to Know Advisory Committee contacted the Attorney General's Office, the Secretary of State, District Attorneys and the National Alliance on Mental Illness in Maine for comments on the confidentiality provision but could not locate anyone familiar with the Board. It appears the Board has not met since 2010 or 2011. During our review we did become aware of groups or boards with similar functions, including the Cold Case Homicide Unit (5 MRSA §200-J); the Domestic Abuse Homicide Review Board (19-A MRSA §4013, sub-§4); the Child Death and Serious Injury Review Panel (22 MRSA §4004, sub-§1, paragraphs E & F); and the Maine Elder Death Analysis Review Team (5 MRSA §200-H).

We discussed recommending repeal of the confidentiality provision or the entire section establishing the Board in light of its apparent dormancy, but ultimately felt that the policy decision to amend this statute is best left to the Health and Human Services Committee of the Legislature. Accordingly, we ask you to consider whether this statute establishes a valuable board that should resume its function or if the Board has become inactive and should be repealed.

Thank you for your consideration of this issue.

Sincerely,

  
Sen. David C. Burns, Chair  
Right to Know Advisory Committee

cc: Members, Health and Human Services Committee  
Members, Right to Know Advisory Committee



**APPENDIX E**

**Recommended legislation to clarify that advance payment may be required  
before providing public records to a requestor**



**Right to Know Advisory Committee**  
Recommended legislation regarding advance payment of costs for public records requests

**Sec. 1. 1 MRSA §408-A, sub-§8, ¶F** is enacted to read:

F. Payment of all costs may be required before the public record is provided to the requestor.

**SUMMARY**

This draft, which is a recommendation of the Right to Know Advisory Committee in response to the decision of the Superior Court in *Flanders v. State, et. al*, BELSC-CV-15-12 (Me. Super. Ct., Waldo Cty., Aug. 12, 2016), is intended to clarify that under Maine’s Freedom of Access Act, an agency or public official may require payment of all costs before providing a public record to a requestor.





**APPENDIX F**

**Recommended legislation to modify or repeal existing public records exceptions**



**Right to Know Advisory Committee**  
Recommended legislation to repeal or amend existing public records exceptions

**Sec. 1.** 1 MRSA §402, sub-§2, ¶R is repealed.

**Sec. 2.** 35-A MRSA §10106, sub-§1 is amended to read:

**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 director has determined contains information that gives the owner or a user an opportunity to obtain 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

~~(2) The board has determined contains information that gives the owner or a user an opportunity to obtain 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;~~

(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.

~~(4) Contains 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; and~~

B. A financial statement or tax return.

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.

## SUMMARY

This draft implements the recommendations of the Right to Know Advisory Committee relating to its review of existing public records exceptions enacted after 2004 and before 2013.

Section 1 repeals the current exception from the definition of “public records” under Maine’s Freedom of Access Act for social security numbers in the possession of the Secretary of State because this is duplicative of the existing general exception for social security numbers in 1 MRSA §402, sub-§2, ¶N.

Section 2 changes the criteria for designation of records of the Efficiency Maine Trust as confidential from requiring that each of four criteria be met to instead require that one of two criteria be met, including that a person to whom the record belongs has requested it be designated confidential and the director of the Efficiency Maine Trust Board has determined the record contains proprietary information, access to which would result in some competitive disadvantage to any person to whom the record belongs or pertains or that the record contains information about the energy usage profile of an identifiable individual. The bill provides that 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 Efficiency Maine Trust is confidential. This bill also provides that the director of the Efficiency Maine Trust, instead of the Board of the Efficiency Maine Trust, may disclose or authorize disclosure of otherwise confidential information in certain specified circumstances.