

RIGHT TO KNOW ADVISORY COMMITTEE

PROPOSED AGENDA

July 24, 2013

9:00 a.m.

Room 438, State House, Augusta

Convene

1. Welcome and Introductions
2. Election of Chair (1 MRSA § 411, sub-§4)
3. Public Access Ombudsman, Brenda Kielty – update
4. Summary of First Regular Session, 126th Legislature’s FOA actions in 2013
 - A. RTK AC recommendations
 - LD 217, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Access to Records Relating to Public-private Partnerships
 - LD 258, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions
 - LD 420, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies
 - B. LD 1493, An Act To Revise the Laws Concerning Criminal History Record Information and Intelligence and Investigative Information, PL 2013, c. 267
 - C. Enacted amendments to FOAA, Ombudsman statute (LD 104, LD 1216, LD 1511)
 - D. Other public records changes
 - Enacted (LD 345, LD 576, LD 619, LD 973)
 - Not enacted (LD 19, LD 135, LD 495, LD 684, LD 1118)
 - E. Proposed public records exceptions reviewed by Judiciary Committee
5. Existing exceptions review process
 - A. Title 22, section 8754, reporting of sentinel events, tabled in 2012
 - B. Titles 26 – 39-A, recommendations due January 2014
6. Prior issues
 - A. Encryption of emergency communications – see letter from Maine Criminal Justice Academy
 - B. Confidentiality of email addresses (see LD 104, above)
7. Law School Externship – update
8. Discussion: topics and projects for 2013
9. Subcommittees: chairs, members, duties
10. Scheduling future meetings, subcommittee meetings
11. Other

Adjourn

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
Annotations updated 9/2012

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
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TITLE 1 GENERAL PROVISIONS

CHAPTER 13 PUBLIC RECORDS AND PROCEEDINGS

SUBCHAPTER 1 FREEDOM OF ACCESS

§ 400. Short title

This subchapter may be known and cited as "the Freedom of Access Act."

- New 2012

§401. Declaration of public policy; rules of construction

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.

Declaration of public policy

- Reason for public proceedings is to aid in the people's business
- Actions be taken openly
- Records open
- Deliberations open
- Clandestine meetings on private property without notice not be used to defeat purposes

- Party alleging violation of FOA has burden of producing evidence that Act violated¹
- The Act's underlying purposes and policies favor disclosure²

This subchapter does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter.

- New 2011

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

Liberally construe and apply to promote underlying purposes and policies

- Interpretation of the Freedom of Access laws is a matter of law that the Supreme Judicial Court reviews de novo³

§402. Definitions

1. Conditional approval. Approval of

¹ Chase et al. v. Town of Machiasport et al., 1998 ME 260, 721 A.2d 636.

² Bangor Historic Track, Inc. v. Department of Agriculture, 2003 ME 140, 837 A.2d 129.

³ Dow v. Caribou Chamber of Commerce and Industry, 2005 ME 113, 884 A.2d 667.

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
Annotations updated 9/2012

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<p>an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.</p>		
<p>1-A. Legislative subcommittee. “Legislative subcommittee” means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.</p>	<p><i>Legislative subcommittee</i> must consist of at least 3 members and be appointed for the purpose of conducting legislative business on behalf of the committee</p>	
<p>2. Public proceedings. The term “public proceedings” as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:</p>	<p><i>Public proceeding:</i> transactions of any functions affecting any or all citizens of the State by listed entities</p>	
<p>A. The Legislature of Maine and its committees and subcommittees;</p>	<ul style="list-style-type: none"> • Legislature and committees and subcommittees 	
<p>B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Technical College System and any of its committees and subcommittees;</p>	<ul style="list-style-type: none"> • Any board or commission of any state agency or authority • Boards of trustees of state educational institutions and their committees and subcommittees 	<ul style="list-style-type: none"> • Hospital Administrative District subject to FOA laws⁴ • “Special civil service study committee” of municipality subject to FOA laws⁵ • Court considers four factors when evaluating whether an entity is subject to the Freedom of Access laws: (1) whether the entity is performing a governmental function; (2) whether the funding of an entity is governmental; (3) the extent of governmental involvement or control; and (4) whether the entity was created by private or legislative action⁶

⁴ Town of Burlington v. Hospital Administrative District No. 1 et al., 2001 ME 59, 769 A.2d 857.

⁵ Lewiston Daily Sun, Inc. v. City of Auburn, 544 A.2d 335 (ME 1988).

⁶ Dow v. Caribou Chamber of Commerce and Industry, 2005 ME 113, 884 A.2d 667.

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<p>C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;</p>	<ul style="list-style-type: none"> • Board, commission agency, authority of political or administrative subdivision 	<ul style="list-style-type: none"> • Local school boards subject to FOA laws⁷ • Indian tribes when acting in their municipal capacities are subject state laws affecting municipal governments, including FOA laws⁸ • A tribal reservation was acting in its business capacity, rather than its municipal capacity when it entered into lease of tribal land with developer of liquefied natural gas facility. The tribe has more autonomy than a town in light of provisions of Act to Implement Maine Indian Claims Settlement.⁹
<p>D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;</p>	<ul style="list-style-type: none"> • Full membership meetings of associations of political or administrative subdivisions 	
<p>E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees;</p>	<ul style="list-style-type: none"> • Maine Public Broadcasting Corporation 	
<p>F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order</p>	<ul style="list-style-type: none"> • Advisory/study commissions set up by Legislature or by Executive Order UNLESS the law, resolve or EO specifically exempts from FOA laws 	

⁷ Marxsen v. Board of Directors, M.S.A.D. No. 5, 591 A.2d 867 (ME 1991).

⁸ Great Northern Paper, Inc. v. Penobscot Nation, 2001 ME 68, 770 A.2d 574, cert. denied 534 U.S. 1019.

⁹ Winifred B. French Corp. v. Pleasant Point Passamaquoddy Reservation, 2006 ME 53, 896 A.2d 950.

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<p>establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and</p> <p>G. The committee meetings, subcommittee meetings and full membership meetings of any association that:</p> <p style="padding-left: 20px;">(1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and</p> <p style="padding-left: 20px;">(2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.</p> <p>This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach.</p>	<ul style="list-style-type: none"> • Statewide interscholastic organizations that receive funding from public or private schools and are meeting in regard to interscholastic activities. • It does not apply to such meetings in which the subject is limited to personnel issues, allegations of interscholastic athletic rule violations, or student athlete or coach eligibility. 	
<p>3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:</p>	<p>Public records defined</p> <ul style="list-style-type: none"> • Written, printed, graphic, mechanical or electronic • In possession or custody of agency, official or association • Received or prepared for use in connection with the transaction of public or governmental business OR contains info relating to the transaction of public or 	<ul style="list-style-type: none"> • Corollary to FOA laws liberal construction is necessarily strict construction of any exceptions to public disclosure¹⁰ • The records of an uncompensated, advisory group created by State officials and acting without legislative mandate to review alleged improprieties are not public records. Courts look at the function the entity performs in evaluating whether an entity or

¹⁰ Guy Gannett Publishing Co. v. University of Maine et al., 555 A.2d 470 (ME 1989).

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	<p>governmental business</p> <ul style="list-style-type: none"> EXCEPTIONS: 	<p>individual, individually or collectively, qualifies as “an agency or public official.”¹¹</p>
<p>A. Records that have been designated confidential by statute;</p>	<ul style="list-style-type: none"> Designated confidential by statute (see other statutes) 	<ul style="list-style-type: none"> The plain language of the corporation statute does not provide that specific document is confidential, nor does the statute implicitly require salary information supplied to the Superintendent of Insurance to be confidential¹² The location of a municipal employee personnel record has no bearing on its protected status under statute (30-A MRSA §2702(1)(B)(5)).¹³
<p>B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding;</p>	<ul style="list-style-type: none"> Within scope of a privilege against discovery or use in civil or criminal trials 	<ul style="list-style-type: none"> Compensation records of hospital district’s management employees not “trade secrets”¹⁴ “Work product” Privilege against self-incrimination Record subject to a court-issued protective order¹⁵ Compensation records of insurer’s board of directors and senior management not “trade secrets”¹⁶
<p>C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and</p>	<ul style="list-style-type: none"> Legislative papers during the legislative session until signed and publicly distributed 	<ul style="list-style-type: none"> The attorney-client privilege does not protect communications in litigation between adverse

¹¹ Moore v. Abbott, 2008 ME 100, 952 A.2d 980.

¹² Medical Mutual Insurance Co. of Maine v. Bureau of Insurance, 2005 ME 12.

¹³ S. Portland Police Patrol Ass’n v. City of S. Portland, 2006 ME 55, 896 A.2d 960.

¹⁴ Town of Burlington v. Hospital Administrative District No. 1 et al., 2001 ME 59, 769 A.2d 857.

¹⁵ Bangor Publishing Co. v. Town of Bucksport, 682 A.2d 227 (ME 1996).

¹⁶ Medical Mutual Insurance Co. of Maine v. Bureau of Insurance, 2005 ME 12.

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<p>interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over;</p> <p>C-1. Information contained in a communication between a constituent and an elected official if the information:</p> <p style="margin-left: 20px;">(1) Is of a personal nature, consisting of:</p> <p style="margin-left: 40px;">(a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;</p> <p style="margin-left: 40px;">(b) Credit or financial information;</p> <p style="margin-left: 40px;">(c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;</p> <p style="margin-left: 40px;">(d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or</p> <p style="margin-left: 40px;">(e) An individual's social security number; or</p> <p style="margin-left: 20px;">(2) Would be confidential if it were in the possession of another public agency or official;</p> <p>D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in</p>	<ul style="list-style-type: none"> • Working papers of legislators and staff for the session or sessions 	<p>parties on opposite sides of the bargaining table. The parties did not have a common interest merely because they are willing to negotiate a settlement.¹⁷</p> <ul style="list-style-type: none"> • New 2011
<p>D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in</p>	<ul style="list-style-type: none"> • Public employer labor negotiation materials 	

¹⁷ Citizens Communications Co. v. Attorney General, 2007 ME 114, 931 A.2d 503.

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<p>collective bargaining with its employees and their designated representatives;</p>		
<p>E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Technical College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B;</p>	<ul style="list-style-type: none">• Faculty and administrative records of state educational institutions, other than boards of trustees	
<p>F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;</p>	<ul style="list-style-type: none">• Otherwise confidential but in the hands of association	
<p>G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;</p>	<ul style="list-style-type: none">• Materials related to legislative positions or insurance in the hands of association of political or administrative subdivisions of the State	
<p>H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct;</p>	<ul style="list-style-type: none">• Medical records and reports of municipal rescue and emergency medical services, except available to law enforcement in criminal investigations	
<p>I. Juvenile records and reports of municipal fire departments regarding the</p>	<ul style="list-style-type: none">• Juvenile fire starter records	

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<p>investigation and family background of a juvenile fire setter;</p> <p>J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization;</p> <p>K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A;</p> <p>L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial</p>	<ul style="list-style-type: none"> • Advisory/study commission working papers • Personally identifying information concerning minors collected/maintained by municipality for recreational and nonmandatory educational services and programs IF ordinance adopted • Security plans, security procedures, risk assessments to prepare/prevent terrorism if expected to jeopardize physical safety of public personnel. Available to Legislature or municipal officials if further protect from disclosure 	<ul style="list-style-type: none"> • Sections of an independent report of a school employment controversy must be redacted if they touch upon the personal history, general character or conduct of an employee or an employee's immediate family (20-A MRSA §6101(2)(B)(5)).¹⁸

¹⁸ Cyr v. Madawaska School Dept., 2007 ME 26, 916 A.2d 967.

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<p>physical damage sufficient to disrupt the normal functioning of a critical infrastructure;</p>		
<p>M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure, systems and software. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;</p>	<ul style="list-style-type: none"> • Information technology infrastructure information 	<ul style="list-style-type: none"> • New 2012
<p>N. Social security numbers;</p>	<ul style="list-style-type: none"> • Social Security Numbers 	<ul style="list-style-type: none"> • Amended 2011 - see also new ¶R (was limited to SSNs in possession of IF&W)
<p>O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:</p> <p style="margin-left: 40px;">(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and</p> <p style="margin-left: 40px;">(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials;</p>	<ul style="list-style-type: none"> • Personal contact information for certain public employees 	
<p>P. Geographical information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner</p>	<ul style="list-style-type: none"> • Geographical information of recreational trails located on private land, unless landowner authorizes release 	

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<p>authorizes the release of the information;</p> <p>Q. Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials, the Department of Corrections or members of the State Board of Corrections under conditions that protect the information from further disclosure; <u>and</u></p> <p>R. Social security numbers in the possession of the Secretary of State; <u>and</u></p> <p>S. <u>E-mail addresses obtained by a political subdivision of the State for the sole purpose of disseminating noninteractive notifications, updates and cancellations that are issued from the political subdivision or its elected officers to an individual or individuals that request or regularly accept these noninteractive communications.</u></p> <p>3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:</p> <p>A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, <u>conviction data public criminal history record information, as defined in Title 16, section 703, subsection 8,</u> address of furlough and dates of furlough;</p> <p>B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or</p>	<ul style="list-style-type: none"> • Department of Corrections or county jail security plans, staffing plans, security procedures or risk assessments prepared for emergency events if the records would endanger one's life or safety. Information in these security plans and procedures can be disclosed to state and county officials if necessary to carry out duties. 	<ul style="list-style-type: none"> • New 2011 - see ¶N • Amended 2013 • New 2013
	<ul style="list-style-type: none"> • More public records: 	
	<ul style="list-style-type: none"> • Public 	<ul style="list-style-type: none"> • Amended 2013
	<ul style="list-style-type: none"> • Public 	<ul style="list-style-type: none"> • Amended 2013

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<p>parolee's identity, conviction data public criminal history record information, as defined in Title 16, section 703, subsection 8, address of residence and dates of supervision; and</p> <p>C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, conviction data public criminal history record information, as defined in Title 16, section 703, subsection 8, and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information.</p>	<ul style="list-style-type: none"> • Not public: Prisoner's, adult probationer's or parolee's info when Commissioner of Corrections determines detrimental to welfare of a client to disclose 	<ul style="list-style-type: none"> • Amended 2013
<p>4. Public records of interscholastic athletic organizations. Any records or minutes of meetings under subsection 2, paragraph G are public records.</p>		<ul style="list-style-type: none"> • New 2012
<p>5. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.</p>		
<p>6. Reasonable office hours. "Reasonable office hours" includes all regular office hours of an agency or official.</p>		
<p>§402-A. Public records defined (REPEALED)</p>	(now part of §402)	
<p>§403. Meetings to be open to public; record of meetings</p> <p>1. Proceedings open to public. Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.</p>	<p>Public proceedings open to public unless</p> <ul style="list-style-type: none"> • Otherwise provided by statute • Authorized executive session pursuant to §405 <p>Required record/minutes open to public inspection</p>	
<p>2. Record of public proceedings. Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made within a reasonable period of time after the proceeding and must be open to public</p>		<ul style="list-style-type: none"> • New 2011

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<p>inspection. At a minimum, the record must include:</p> <p>A. The date, time and place of the public proceeding;</p> <p>B. The members of the body holding the public proceeding recorded as either present or absent; and</p> <p>C. All motions and votes taken, by individual member, if there is a roll call.</p>		
<p>3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.</p>		<ul style="list-style-type: none">• New 2011
<p>4. Maintenance of record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.</p>		<ul style="list-style-type: none">• New 2011
<p>5. Validity of action. The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.</p>		<ul style="list-style-type: none">• New 2011
<p>6. Advisory bodies exempt from record requirements. Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.</p>		<ul style="list-style-type: none">• New 2011
<p>§404. Recorded or live broadcasts authorized</p>		
<p>In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings. The body or agency holding the public proceedings may make reasonable rules and regulations governing these</p>	<p>Writing, taping, filming, live broadcasts authorized if does not interfere with orderly conduct of proceedings</p>	<ul style="list-style-type: none">• Unemployment Insurance Commission proceedings not open to the public so no right to independently record proceeding¹⁹

¹⁹ Martin v. Unemployment Insurance Commission, 1998 ME 271, 723 A.2d 412.

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activities, so long as these rules or regulations do not defeat the purpose of this subchapter.		
§404-A. Decisions (REPEALED)	(see now §407)	
§405. Executive sessions		
Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions.	Executive sessions may be held subject to the following:	
1. Not to defeat purposes of subchapter. These sessions may not be used to defeat the purposes of this subchapter as stated in section 401.	<ul style="list-style-type: none"> • Not to defeat purposes of FOA 	
2. Final approval of certain items prohibited. An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at executive session.	<ul style="list-style-type: none"> • Not to finally approve an ordinance, order, rule, resolution, regulation, contract, appointment or other official action 	<ul style="list-style-type: none"> • Employee whose contract was not renewed by school committee was not entitled to relief on ground that committee discussed the nonrenewal in executive sessions where the vote to refuse to extend or renew the contract was made in public meeting attended by employee and her counsel²⁰
3. Procedure for calling of executive session. An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.	<ul style="list-style-type: none"> • Must have 3/5s of the vote of the members present and voting 	
4. Motion contents. A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the	<ul style="list-style-type: none"> • The precise nature of the business to be conducted in executive session must be part of the motion 	<ul style="list-style-type: none"> • Record clearly established that Board of Selectmen, before going into executive session to discuss pending litigation, stated that the session was for purposes of receiving from the town's attorney updated status on that litigation, thereby complying with law²¹

²⁰ Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

²¹ Vella v. Town of Camden, 677 A.2d 1051 (ME 1996).

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executive session exists and the failure to cite the valid authority was inadvertent.		
<p>5. Matters not contained in motion prohibited. Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.</p>	<ul style="list-style-type: none"> Motions not contained in the motion are prohibited 	
<p>6. Permitted deliberation. Deliberations on only the following matters may be conducted during an executive session:</p> <p>A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or person or persons subject to the following conditions:</p> <p>(1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy would be violated;</p> <p>(2) Any person charged or investigated shall be permitted to be present at an executive session if he so desires;</p> <p>(3) Any person charged or</p>	<p>Only the following deliberations may be conducted during an executive session:</p> <ul style="list-style-type: none"> Discussion of employment issues, subject to the following limitations Only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy The individual can choose to be present If the individual 	<ul style="list-style-type: none"> Public body charged with violating FOA laws during executive session has burden of proving that its actions during executive session complied with FOA laws²² Any statutory exceptions to the requirement that deliberations be public must be narrowly construed²³ The time for a "reasonable" expectation of damage to the reputation of an employee to be determined is before the executive session is conducted.²⁴

²² Underwood v. City of Presque Isle et al., 715 A.2d 148 (ME 1998).

²³ Underwood v. City of Presque Isle, 715 A.2d 148 (ME 1998).

²⁴ Blethen Maine Newspapers, Inc. v. Portland School Committee, 2008 Me 69, 947 A.2d 479.

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<p>investigated may request in writing that the investigation or hearing of charges or complaints against him be conducted in open session. A request, if made to the agency, must be honored; and</p> <p>(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.</p>	<p>requests in writing that the proceeding be open to the public, the agency must open the proceeding; and</p> <ul style="list-style-type: none"> • The person filing the complaint may choose to be present 	
<p>This paragraph does not apply to discussion of a budget or budget proposal;</p>	<ul style="list-style-type: none"> • This paragraph cannot be used to discuss budget issues in executive session. 	<ul style="list-style-type: none"> • Questions asked of employees about fiscal matters during executive session do not amount to discussions of the budget or budget deliberations.²⁵
<p>B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, as long as:</p> <p>(1) The student and legal counsel and, if the student be a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire.</p>	<p>A school board's discussion of the suspension or expulsion of a student, with the following restriction</p> <ul style="list-style-type: none"> • The student, parents/guardians, legal counsel may choose to be present 	
<p>C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency;</p>	<p>Discussion of property issues that would prejudice the competitive or bargaining position of the public body</p>	
<p>D. Discussion of labor contracts and</p>	<p>Negotiations between a public</p>	

²⁵ Blethen Maine Newspapers, Inc. v. Portland School Committee, 2008 Me 69, 947 A.2d 479.

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proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions;	employer and public employees	
E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage.	Consultations between a public body and its attorney concerning pending or contemplated litigation, matters that are confidential under the Maine Code of Professional Responsibility, or matters that would clearly place the public body at a substantial disadvantage	<ul style="list-style-type: none"> The mere presence of an attorney cannot be used to circumvent the open meeting requirement by invocation of attorney consultation exception²⁶
F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;	Discussion of records made confidential by statute	
G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and	Discussions of professional licensing decisions	
H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.	Discussions with municipal officers and code enforcement officer about enforcement of land use laws and municipal ordinances when the CEO is representing the municipality in court. Similar to attorney-client provision in paragraph E	

²⁶ Underwood v. City of Presque Isle, 715 A.2d 148 (ME 1998).

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	without the requirement that CEO be an attorney	
<p>§405-A. Recorded or live broadcasts authorized (REPEALED)</p>	(see now §404)	
<p>§405-B. Appeals (REPEALED)</p>	(see now §409)	
<p>§ 405-C. Appeals from actions (REPEALED)</p>	(see now §409)	
<p>§406. Public notice</p> <p>Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons. This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.</p>	<ul style="list-style-type: none"> • Notice required if agency or body consists of at least 3 persons • Timing: ample time to allow public attendance • Manner: reasonably calculated to notify the general public in the jurisdiction served by the public body • Emergency meeting: notify representatives of local media whenever practical. By same or faster means 	<ul style="list-style-type: none"> • One day notice of planning board's additional meeting sufficient under the circumstances²⁷
<p>§407. Decisions</p> <p>1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to apprise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by</p>	<ul style="list-style-type: none"> • Written record of conditional approval or denial <ul style="list-style-type: none"> • Reason/reasons • Findings of fact 	<ul style="list-style-type: none"> • FOA laws require agency to set out its findings with a level of specificity that is sufficient to apprise the applicant and any interested member of the public of the basis of the decision²⁸ • When local agency

²⁷ Crispin et al. v. Town of Scarborough et al., 1999 ME 112, 736 A.2d 241.

²⁸ Yusem v. Town of Raymond, 2001 ME 61, 769 A.2d 865.

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<p>the agency and made available to any interested member of the public who may wish to review it.</p>		<p>conditionally approves or denies a permit, the agency must make findings of fact adequate to indicate the basis for the decision and to allow meaningful judicial review²⁹</p>
<p>2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.</p>	<ul style="list-style-type: none"> • Written record of dismissal or refusal to renew a contract of official, employee, appointee <ul style="list-style-type: none"> • Reason/reasons • Findings of fact 	<ul style="list-style-type: none"> • The Personnel Committee of a municipality is not required to vote as to each individual reason for termination of an employee as long as the decision included specific findings of fact and conclusions.³⁰
<p>§408. Public records available for public inspection and copying</p> <p style="text-align: center;">(REPEALED)</p>	<p>(See now 408-A)</p>	
<p>§ 408-A. Public records available for inspection and copying</p> <p>Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record.</p> <p>1. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge a fee for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee</p>	<p>New 2012, replaces § 408</p> <ul style="list-style-type: none"> • Every person • Right to inspect and copy • Within a reasonable period of time after request • Inspection during reasonable office hours. • No fee for inspection unless record converted or compiled 	<ul style="list-style-type: none"> • When person requests information that falls within FOA laws' disclosure requirements, and governmental entity knows that it has particular records containing that information, entity must at least inform requesting party that material is available and that the requesting party may come in and "inspect and copy"

²⁹ Carroll v. Town of Rockport, 2003 ME 135, 837 A.2d 148.

³⁰ Quintal v. City of Hallowell, 2008 ME 155, 956 A.2d 88.

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as provided in subsection 8.		the information sought ³¹
<p>2. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. The agency or official may charge a fee for copies as provided in subsection 8.</p> <p>A. A request need not be made in person or in writing.</p> <p>B. The agency or official shall mail the copy upon request.</p> <p>3. Acknowledgment; clarification; time estimate; cost estimate. The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within a reasonable period of time, <u>5 working days of receiving the request</u> and may request clarification concerning which public record or public records are being requested. <u>The</u> <u>Within a reasonable time of receiving the request</u> <u>the</u> agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request, <u>as well as a cost estimate as provided in subsection 9.</u> The agency or official shall make a good faith effort to fully respond to the request within the estimated time.</p>	<ul style="list-style-type: none"> • During reasonable office hours • Cost of copying paid by requestor (see sub-§8) • Copy request need not be in person • Mail copies upon request • Must acknowledge request for record within 5 working days of receiving the request • Estimate of time to comply with request and cost to be provided with a reasonable time 	<ul style="list-style-type: none"> • Amended 2013
<p>4. Refusals; denials. If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide written notice of the denial, stating the reason for the denial, within 5 working days of <u>the receipt of the request for inspection or copying.</u> <u>Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.</u></p>	<ul style="list-style-type: none"> • Written notice of request denial within 5 working days of request • Failure to comply is subject to appeal under section 409 	<ul style="list-style-type: none"> • Amended 2013
<p>5. Schedule. Inspection, conversion pursuant to subsection 7 and copying of a public record subject to a request under this section may</p>	<ul style="list-style-type: none"> • May schedule compliance with record request so not to delay 	

³¹ Bangor Publishing Co. v. City of Bangor, 544 A.2d 733 (ME 1988).

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<p>be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody or control of the public record requested. If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists.</p>	<p>or inconvenience the agency's or official's regular activities</p>	
<p>6. No requirement to create new record. An agency or official is not required to create a record that does not exist.</p>	<ul style="list-style-type: none"> • No requirement to create a record 	
<p>7. Electronically stored public records. An agency or official having custody or control of a public record subject to a request under this section shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.</p>	<ul style="list-style-type: none"> • State must provide access to electronic record as printed a document or in the medium it is stored at discretion of the requestor unless it would result in the disclosure of confidential information 	
<p>A. If in order to provide access to an electronically stored public record the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format for inspection or copying, the agency or official may charge a fee to cover the cost of conversion as provided in subsection 8.</p>		
<p>B. This subsection does not require an agency or official to provide a requester with access to a computer terminal.</p>	<ul style="list-style-type: none"> • Does not require agency or official to provide access to computer terminal 	
<p>8. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.</p>		

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<p>A. The agency or official may charge a reasonable fee to cover the cost of copying.</p>	<ul style="list-style-type: none"> • May charge a reasonable copying fee 	
<p>B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.</p>	<ul style="list-style-type: none"> • May charge for actual conversion costs and a fee to cover cost of searching for, retrieving and compiling the record of not more than \$15 per hour after the first hour of staff time per request 	
<p>C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format.</p>		
<p>D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies.</p>	<ul style="list-style-type: none"> • No charge for inspection unless record must be compiled or converted 	
<p>E. The agency or official may charge for the actual mailing costs to mail a copy of a record.</p>	<ul style="list-style-type: none"> • May charge actual mailing 	
<p>9. Estimate. The agency or official having custody or control of a public record subject to a request under this section shall provide to the requester an estimate of the time necessary to complete the request and of the total cost as provided by subsection 8. If the estimate of the total cost is greater than \$30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 10 applies.</p>	<ul style="list-style-type: none"> • Estimate of compliance time and costs 	
<p>10. Payment in advance. The agency or official having custody or control of a public record subject to a request under this section may require a requester to pay all or a portion of the estimated costs to complete the request prior to the search, retrieval, compiling, conversion and copying of the public record if:</p>	<ul style="list-style-type: none"> • May require payment in advance if estimated cost exceeds \$100 or requestor has previously failed to pay a fee 	
<p>A. The estimated total cost exceeds \$100; or</p>		
<p>B. The requester has previously failed to pay a properly assessed fee under this</p>		

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chapter in a timely manner.

11. Waivers. The agency or official having custody or control of a public record subject to a request under this section may waive part or all of the total fee charged pursuant to subsection 8 if:

A. The requester is indigent; or

B. The agency or official considers release of the public record requested to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

- Waiver of fees if requestor indigent or release of record is in the public interest

§409. Appeals

~~**1. Records.** Any person aggrieved by a refusal or denial to inspect or copy a record under section 408-A may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.~~

1. Records. Any person aggrieved by a refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record under section 408-A may appeal the refusal, denial or failure within 30 calendar days of the receipt of the written notice of refusal, denial or failure to any Superior Court within the State as a trial de novo. The agency or official shall file an answer within 14 calendar days. If a court, after a trial de novo, determines such refusal, denial or failure was not for just and proper cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so

- Refusal of inspection or copying must be
 - In writing
 - Within 5 working days of request
- Appeal from denial within 5 working days of denial to Superior Court
- Court may issue order of disclosure
- Expedited
- Failure of governmental body to respond to request for records in the time established by statute is deemed a denial of the request³²
- Amended 2012 see also 408-A
- ~~Repealed and replaced 2013~~
- In its review, superior court is the forum of origin for a determination of both facts and law with respect to the alleged violation and does not function in an appellate capacity, and thus, procedures for taking additional evidence on judicial review are inapplicable (overruling Marxsen v. Board of Directors, 591 A.2d 867).³³

³² Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

³³ Underwood v. City of Presque Isle, 1998 ME 166, 715 A.2d 148.

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<p><u>require.</u></p> <p>2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.</p>	<ul style="list-style-type: none"> • Approval of official action in executive session is illegal; officials subject to penalties • Superior Court shall declare action null and void if action taken illegally • Expedited 	<ul style="list-style-type: none"> • Freedom of Access claim must be filed within 30 days of discovering a possible violation (MRCivP, Rule 80B)³⁴ • Burden of proof on agency to establish “just and proper cause” for denial of a FOA request³⁵ • Amended 2012 • Supreme Judicial Court, sitting as the Law Court, could not create settlement negotiation privilege against disclosure under FOA; Court could only create new privileges pursuant to its rulemaking powers.³⁶
<p>3. Proceedings not exclusive. The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.</p>	<ul style="list-style-type: none"> • Other civil remedies available 	
<p>4. Attorney’s fees. In an appeal under subsection 1 or 2, the court may award reasonable attorney’s fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney’s fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.</p>	<ul style="list-style-type: none"> • Reasonable attorney’s fees and litigation expenses maybe awarded to the prevailing plaintiff who appealed if the court determines that the refusal or illegal action was committed in bad faith 	
<p>This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.</p> <p>§410. Violations</p> <p>For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture of not more than</p>	<ul style="list-style-type: none"> • Willful = intentional or knowing • Agency or entity liable for civil violation; fine 	<ul style="list-style-type: none"> • Penalties for official actions taken in executive session in violation of FOA laws may only be sought

³⁴ Palmer v. Portland School Committee et al., 652 A.2d 86 (ME 1995).

³⁵ Springfield Terminal Railway Company v. Department of Transportation, 2000 ME 126, 754 A.2d 353.

³⁶ Citizens Communications Co. v. Attorney General, 2007 ME 114, 931 A.2d 503.

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\$500 may be adjudged.	of up to \$500	by the Attorney General or AG's representative ³⁷ <ul style="list-style-type: none">• Only Attorney General or AG's representative may enforce FOA laws by seeking imposition of fine³⁸• If a requesting party has undertaken successful appeal of denial, that party is entitled to costs³⁹

§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;

³⁷ Lewiston Daily Sun v. School Administrative District No. 43, 1999 ME 143, 738 A.2d 1239.

³⁸ Scola v. Town of Sanford, 1987 ME 119, 695 A.2d 1194.

³⁹ Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

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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; and

M. The Attorney General or the Attorney General's designee.

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

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<p>appointed for the duration of the legislative terms of office in which they were appointed.</p>		
<p>C. Members may serve beyond their designated terms until their successors are appointed.</p>		
<p>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.</p>		
<p>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.</p>		
<p>6. Duties and powers. The advisory committee:</p>		
<p>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;</p>		
<p>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;</p>		
<p>C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that</p>		

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	<p>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;</p>	
	<p>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 the information publicly available;</p>	
	<p>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;</p>	
	<p>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;</p>	
	<p>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</p>	

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<p>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;</p> <p>H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered;</p> <p>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;</p> <p>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</p> <p>K. May undertake other activities consistent with its listed responsibilities.</p>		
<p>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</p>		

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
Annotations updated 9/2012

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
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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.

§412 Public records and proceedings training for certain elected officials

1. Training required. A public access officer and an elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official or public access officer shall complete the training not later than the 120th day after the date the elected

- Amended 2012

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
Annotations updated 9/2012

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
<p>official takes the oath of office to assume the person's duties as an elected official or the person is designated as a public access officer pursuant to section 413, subsection 1.</p>		
<p>2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in:</p>		<ul style="list-style-type: none">• Amended 2012
<p>A. The general legal requirements of this chapter regarding public records and public proceedings;</p>		
<p>B. Procedures and requirements regarding complying with this chapter;</p>		
<p>C. Penalties and other consequences for failure to comply with this chapter.</p>		
<p>An elected official or a public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.</p>		
<p>3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official or a public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected. A public access officer shall file the record with the agency or official that designated the public access officer.</p>		<ul style="list-style-type: none">• Amended 2012
<p>4. Application. This section applies to a public access officer and the following elected officials:</p>		<ul style="list-style-type: none">• Amended 2012

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)

Annotations updated 9/2012

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
A. The Governor;		
B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;		
C. Members of the Legislature elected after November 1, 2008;		
D. Deleted. Laws 2007, c. 576, §2.		
E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;		
F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;		
G. Officials of school <u>administrative</u> units; and		
H. Officials of regional or other political subdivisions who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.		

- New 2012

§ 413. Public access officer

1. Designation; responsibility. Each agency, county, municipality, school administrative unit and regional or other political subdivision shall designate an existing employee as its public access officer to serve as the contact person for that agency, county, municipality,

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
Annotations updated 9/2012

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
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school administrative unit and regional or other political subdivision with regard to requests for public records under this subchapter. The public access officer is responsible for ensuring that each public record request is acknowledged within a reasonable period of time and that a good faith estimate of when the response to the request will be complete is provided according to section 408-A. The public access officer shall serve as a resource within the agency, county, municipality, school administrative unit and regional or other political subdivision concerning freedom of access questions and compliance.

2. Acknowledgment and response required. An agency, county, municipality, school administrative unit and regional or other political subdivision that receives a request to inspect or copy a public record shall acknowledge and respond to the request regardless of whether the request was delivered to or directed to the public access officer.

3. No delay based on unavailability. The unavailability of a public access officer may not delay a response to a request.

4. Training. A public access officer shall complete a course of training on the requirements of this chapter relating to public records and proceedings as described in section 412.

§ 414. Public records; information technology

An agency shall consider, in the purchase of and contracting for computer software and other information technology resources, the extent to which the software or technology will:

1. Maximize public access. Maximize public access to public records; and

2. Maximize exportability; protect confidential information. Maximize the exportability of public records while protecting confidential information that may be part of public records.

SUBCHAPTER 1-A

(headnote revised 2011)

PUBLIC RECORDS EXCEPTIONS AND

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
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FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
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ACCESSIBILITY

§431. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Public records exception.

"Public records exception" or "exception" means a provision in a statute or a proposed statute that declares a record or a category of records to be confidential or otherwise not a public record for purposes of subchapter 1.

2. Review committee. "Review committee" means the joint standing committee of the Legislature having jurisdiction over judiciary matters.

3. Advisory committee. "Advisory committee" means the Right To Know Advisory Committee established in Title 5, section 12004-J, subsection 14 and described in section 411.

§432. Exceptions to public records; review

1. Recommendations. During the second regular session of each Legislature, the review committee may report out legislation containing its recommendations concerning the repeal, modification and continuation of public records exceptions and any recommendations concerning the exception review process and the accessibility of public records. Before reporting out legislation, the review committee shall notify the appropriate committees of jurisdiction concerning public hearings and work sessions and shall allow members of the appropriate committees of jurisdiction to participate in work sessions.

- Amended 2011

2. Process of evaluation. According to the schedule in section 433, the advisory committee shall evaluate each public records exception that is scheduled for review that biennium. This section does not prohibit the evaluation of a public record exception by either the advisory committee or the review committee at a time other than that listed in section 433. The following criteria apply in determining whether

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
Annotations updated 9/2012

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
<p>each exception scheduled for review should be repealed, modified or remain unchanged:</p> <ul style="list-style-type: none">A. Whether a record protected by the exception still needs to be collected and maintained;B. The value to the agency or official or to the public in maintaining a record protected by the exception;C. Whether federal law requires a record to be confidential;D. Whether the exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;H. Whether the exception is as narrowly tailored as possible; andI. Any other criteria that assist the review committee in determining the value of the exception as compared to the public's interest in the record protected by the exception.		
<p>2-A. Accountability review of agency</p>		

FOA section by section

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FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
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or official. In evaluating each public records exception, the advisory committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

2-B. Recommendations to review committee. The advisory committee shall report its recommendations under this section to the review committee no later than the convening of the second regular session of each Legislature.

2-C. Accessibility of public records. The advisory committee may include in its evaluation of public records statutes the consideration of any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.

- New 2011

3. Assistance from committees of jurisdiction. The advisory committee may seek assistance in evaluating public records exceptions from the joint standing committees of the Legislature having jurisdiction over the subject matter related to the exceptions being reviewed. The advisory committee may hold public hearings after notice to the appropriate committees of jurisdiction.

§433. Schedule for review of exceptions to public records

1. Scheduling guidelines. (repealed)

2. Scheduling guidelines. The advisory committee shall use the following list as a guideline for scheduling reviews of public records exceptions.

A. Exceptions codified in the following Titles are scheduled for review in 2008:

- (1) Title 1;

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Statute updated 7/17/2013 (changes effective 10/9/13)
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FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
(2) Title 2;		
(3) Title 3;		
(4) Title 4;		
(5) Title 5;		
(6) Title 6;		
(7) Title 7;		
(8) Title 8;		
(9) Title 9-A; and		
(10) Title 9-B.		

B. Exceptions codified in the following
Titles are scheduled for review in 2010:

- (1) Title 10;
- (2) Title 11;
- (3) Title 12;
- (4) Title 13;
- (5) Title 13-B;
- (6) Title 13-C;
- (7) Title 14;
- (8) Title 15;
- (9) Title 16;
- (10) Title 17;
- (11) Title 17-A;
- (12) Title 18-A;
- (13) Title 18-B;
- (14) Title 19-A;
- (15) Title 20-A; and

FOA section by section

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(16) Title 21-A.

C. Exceptions codified in the following
Titles are scheduled for review in 2012:

- (1) Title 22;
- (2) Title 23;
- (3) Title 24;
- (4) Title 24-A; and
- (5) Title 25.

D. Exceptions codified in the following
Titles are scheduled for review in 2014:

- (1) Title 26;
- (2) Title 27;
- (3) Title 28-A;
- (4) Title 29-A;
- (5) Title 30;
- (6) Title 30-A;
- (7) Title 31;
- (8) Title 32;
- (9) Title 33;
- (10) Title 34-A;
- (11) Title 34-B;
- (12) Title 35-A;
- (13) Title 36;
- (14) Title 37-B;
- (15) Title 38; and
- (16) Title 39-A.

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
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3. Scheduling changes. The advisory committee may make adjustments to the scheduling guidelines provided in subsection 2 as it determines appropriate and shall notify the review committee of such adjustments.

§434. Review of proposed exceptions to public records

1. Procedures before legislative committees. Whenever a legislative measure containing a new public records exception is proposed or a change that affects the accessibility of a public record is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed exception or proposed change that affects the accessibility of a public record may not be enacted into law unless review and evaluation pursuant to subsections 2 and 2-B have been completed.

- Amended 2011

2. Review and evaluation. Upon referral of a proposed public records exception from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed exception should be enacted:

- A. Whether a record protected by the proposed exception needs to be collected and maintained;
- B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception;
- C. Whether federal law requires a record covered by the proposed

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
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exception to be confidential;

D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;

E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;

F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;

H. Whether the proposed exception is as narrowly tailored as possible; and

I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.

2-A. Accountability review of agency or official. In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

FOA section by section

Statute updated 7/17/2013 (changes effective 10/9/13)
Annotations updated 9/2012

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
<p>2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.</p>		<ul style="list-style-type: none">• New 2011
<p>3. Report. The review committee shall report its findings and recommendations on whether the proposed exception or proposed limitation on accessibility should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.</p>		<ul style="list-style-type: none">• Amended 2011

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**Public Access Ombudsman
Current law**

Updated 7/2013 (changes effective 10/9/13)

**TITLE 5
ADMINISTRATIVE PROCEDURES AND SERVICES**

**PART 1
STATE DEPARTMENTS**

**CHAPTER 9
ATTORNEY GENERAL**

§200-I. Public Access Division; Public Access Ombudsman

1. Public Access Division; Public Access Ombudsman. There is created within the Department of the Attorney General the Public Access Division to assist in compliance with the State's freedom of access laws, Title 1, chapter 13. The Attorney General shall appoint the Public Access Ombudsman, referred to in this section as "the ombudsman," to administer the division.

2. Duties. The ombudsman shall:

A. Prepare and make available interpretive and educational materials and programs concerning the State's freedom of access laws in cooperation with the Right To Know Advisory Committee established in Title 1, section 411;

B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws;

C. Respond to and work to resolve complaints made by the public and public agencies and officials concerning the State's freedom of access laws;

D. Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor and the parties involved; ~~and~~

E. Make recommendations concerning ways to improve public access to public records and proceedings; and

F. Coordinate with the state agency public access officers the compilation of data through the development of a uniform log to facilitate record keeping and annual reporting of the number of requests for information, the average response time and the costs of processing requests.

3. Assistance. The ombudsman may request from any public agency or official such assistance, services and information as will enable the ombudsman to effectively carry out the responsibilities of this section.

Public Access Ombudsman
Current law

Updated 7/2013 (changes effective 10/9/13)

4. Confidentiality. The ombudsman may access records that a public agency or official believes are confidential in order to make a recommendation concerning whether the public agency or official may release the records to the public. The ombudsman's recommendation is not binding on the public agency or official. The ombudsman shall maintain the confidentiality of records and information provided to the ombudsman by a public agency or official under this subsection and shall return the records to the public agency or official when the ombudsman's review is complete.

5. Report. The ombudsman shall submit a report not later than March 15th of each year to the Legislature and the Right To Know Advisory Committee established in Title 1, section 411 concerning the activities of the ombudsman for the previous year. The report must include:

- A. The total number of inquiries and complaints received;
- B. The number of inquiries and complaints received respectively from the public, the media and public agencies or officials;
- C. The number of complaints received concerning respectively public records and public meetings;
- D. The number of complaints received concerning respectively:
 - (1) State agencies;
 - (2) County agencies;
 - (3) Regional agencies;
 - (4) Municipal agencies;
 - (5) School administrative units; and
 - (6) Other public entities;
- E. The number of inquiries and complaints that were resolved;
- F. The total number of written advisory opinions issued and pending; and
- G. Recommendations concerning ways to improve public access to public records and proceedings.

UNALLOCATED, PL 2013, chapter 229:

Sec. 3. Development of centralized methods for public record requests; report. The Department of the Attorney General, with input from the Department of Administrative and Financial Services, Office of Information Technology and state agency public access officers as defined in the Maine Revised Statutes, Title 1, section 402, subsection 5, shall:

**Public Access Ombudsman
Current law**

Updated 7/2013 (changes effective 10/9/13)

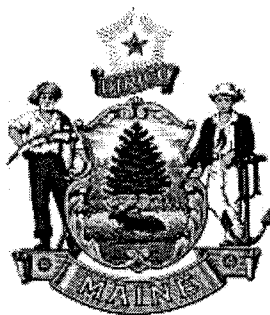
1. Review the current system used by state agencies for receiving and responding to requests for public records in accordance with Title 1, chapter 13, subchapter 1; and
2. Review the feasibility of developing a centralized system for coordinating the receipt of and response to requests to state agencies for public records in accordance with Title 1, chapter 13, subchapter 1.

A centralized system developed by the Department of the Attorney General must include a single website address, a single e-mail address and a directory for the public to use to make requests for public records of all state agencies. By January 5, 2014, the Department of the Attorney General shall submit to the Joint Standing Committee on Judiciary a report relating to the reviews under this section, including findings and recommendations and suggested statutory changes needed to implement the recommendations. The Joint Standing Committee on Judiciary may report out a bill relating to the subject matter of the report to the Second Regular Session of the 126th Legislature.

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**STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL**

Janet T. Mills, Attorney General



**PUBLIC ACCESS OMBUDSMAN REPORT
Brenda L. Kielty, Esq., Ombudsman**

March 2013

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MESSAGE FROM ATTORNEY GENERAL JANET T. MILLS

“Government ought to be all outside and no inside. . . . Everybody knows that corruption thrives in secret places, and avoids public places, and we believe it a fair presumption that secrecy means impropriety.”

- Woodrow Wilson

Thirty years ago, if you said you wanted to “FOA” somebody, you might have been arrested for threatening to commit a crime. Today, the word “FOA”—as a noun, as a verb—has become an integral part of our vocabulary, particularly for people who work in government and in the news media. For some the term represents a threat; for others, a nuisance, the basis for a news story, the start of a lawsuit, a glimpse into a decision or into the purpose of a meeting.

Since 1967 citizens have enjoyed the right to acquire information from the federal government by statute. Other countries, even non-democratic regimes, have followed suit. Since 1975 Maine has provided a statutory right of access to governmental information and governmental meetings. We have become accustomed to participation. We resent stalling. We expect full access.

After all, what would our government be like if it operated in secret—without access, without public participation or public knowledge? Many believe that nothing is more fundamental to our democracy than transparency in government, in its documents, its actions and its deliberations.

This right is not absolute, of course. Our statutes still shield matters of personal privacy, trade secrets, investigative information, personnel records, and the like. When you file a form with the government containing personal information, do you expect that others outside that agency will see the information, even if you had no choice about filing that form with the government, that your name might be listed in the newspaper or on a social network as holding a particular license from the government?

The balancing of public access with legitimate privacy interests is what our laws strive to achieve. It is the reason we have a “Right to Know Advisory Committee,” made up of news people, lawmakers and regular citizens. It is the reason we require the Legislature’s Judiciary Committee to review the myriad confidentiality statutes on the books each year to see if they still make sense. It is the reason we now have a fulltime “Public Access Ombudsman” in the Office of the Attorney General.

This first report of the Ombudsman covers a period of her first four months on the job. We hope this report sheds light not only on the volume and type of work performed already but also on the challenges of achieving that important balance between competing interests of personal privacy and transparency, each of equal importance to the citizens of this state. While government may never be “all outside, no inside,” we are determined to make our government more “outside” than ever before, while protecting the legitimate “inside” for which citizens have every right to expect protection.

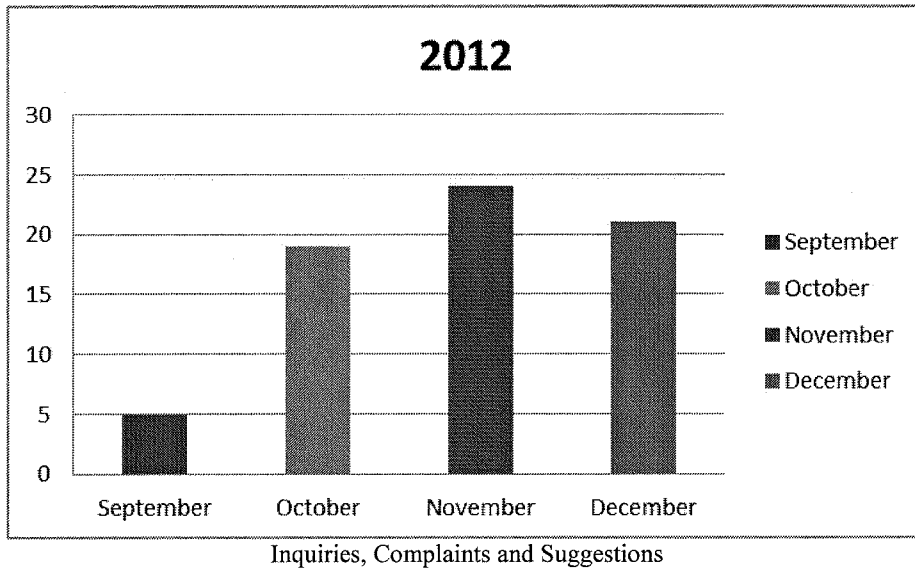
EXECUTIVE SUMMARY

The mission of the public access ombudsman is simple – to serve as a resource concerning the FOAA process and to solve disputes between requesters and public agencies. The ombudsman serves both FOAA requesters and agencies. The ombudsman advocates for adherence to the law. Located in the Office of the Attorney General, the position is independent of the executive branch.

Beginning in the last quarter of 2012, requesters and agencies asked for assistance with everything from filing requests to dealing with difficult requesters to resolving disputes. From September 11, 2012 to December 31, 2012 there were 50 inquiries, 17 complaints and two suggestions. Most of the persons seeking assistance were private citizens and most of the questions or complaints related to municipal government.

During the first few months, the ombudsman conducted outreach and training, updated the website, designed a case management system, and responded to inquiries and complaints. Much remains to be done. One focus for 2013 will be working with the public access officers who are appointed as the contact person for their agency to develop training, support and best practice resources.

Brenda L. Kielty, Public Access Ombudsman



ESTABLISHING THE OMBUDSMAN PROGRAM

The State FOAA website, [Your Right to Know: Maine's Freedom of Access Act](#), provides contact information for the ombudsman and links to a variety of resources including a Frequently Asked Questions page that serves as a self-administered training for public officials. The ombudsman has assumed responsibility for updating and maintaining the website to reflect changes in the law.

In the first three months, the ombudsman:

- Created a database to meet the dual purposes of tracking contacts and measuring results. The case management system will require enhancements as the volume of contacts continues to grow.
- Created an intake and review process for determining the needs of a requester or agency and the appropriate action or referral to address that need.
- Publicized the new program through interviews with local and regional media outlets. Speaking at the annual fall conferences for the Maine Press Association, the Maine School Board Association and the Association of Conservation Districts provided visibility, an opportunity to get input from interested parties, and a forum to share the mission of the program.
- Attended the Right to Know Advisory Committee meetings, met with citizen activists and counsel for State and municipal agencies, and researched what ombudsman offices in other states are doing. Connecting with both requester and agency communities provided valuable information and will help gauge priorities and goals for the program.
- In December, the ombudsman presented the FOAA training to the incoming 126th Legislature required by 1 M.R.S. § 412.

ANSWERING INQUIRIES & RESOLVING DISPUTES

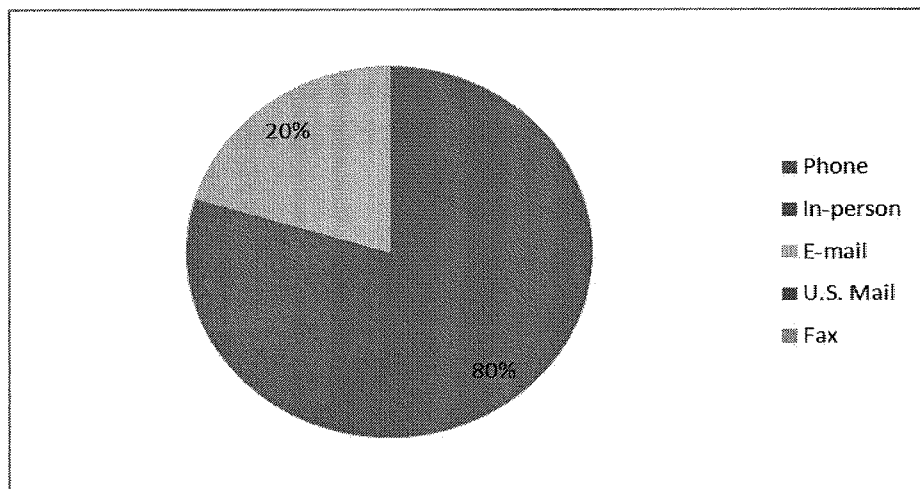
“The ombudsman shall respond to informal inquiries made by the public and public agencies and officials concerning the State’s freedom of access laws; and respond to and work to resolve complaints made by the public and public agencies and officials concerning the State’s freedom of access laws.” 5 M.R.S. § 200-I(2)(A) and (B).

The ombudsman may request assistance, services and information from any public agency or official to effectively carry out the functions of the office. The ombudsman can access confidential records in order to make a recommendation concerning the release of records to the public and will give confidential information received from an agency the same degree of protection as provided by the agency. Any recommendations issued by the ombudsman are non-binding. 5 M.R.S. § 200-I(4).

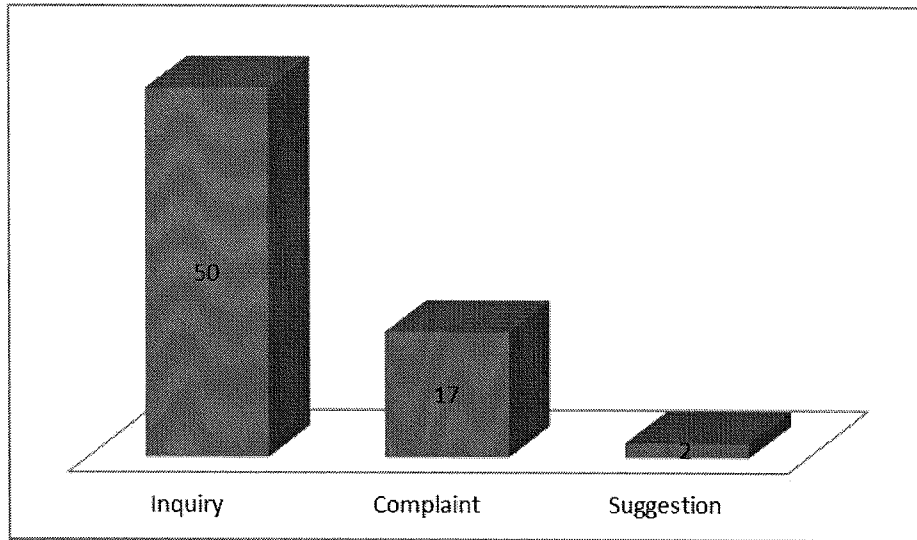
The ombudsman did not issue any advisory opinions in 2012 or the first three months of 2013.

From early September until the end of 2012, there were 69 inquiries, complaints and suggestions. Requests for help ranged from questions about how to file a FOAA request to more difficult inquiries regarding situations in which the FOAA issues were only part of a larger dispute.

The bulk of initial contact was by telephone (55) and the remainder by email (14).



The 69 contacts included general inquiries (50), complaints (17) and suggestions (2).



Of the contacts concerning public records (52), the most common questions concerned:

- Reasonable response times and delay
- Fees
- Confidentiality exceptions
- Basis for a denial
- Requesting an electronic document in digital format

Of the contacts concerning public meetings (17), most questions concerned:

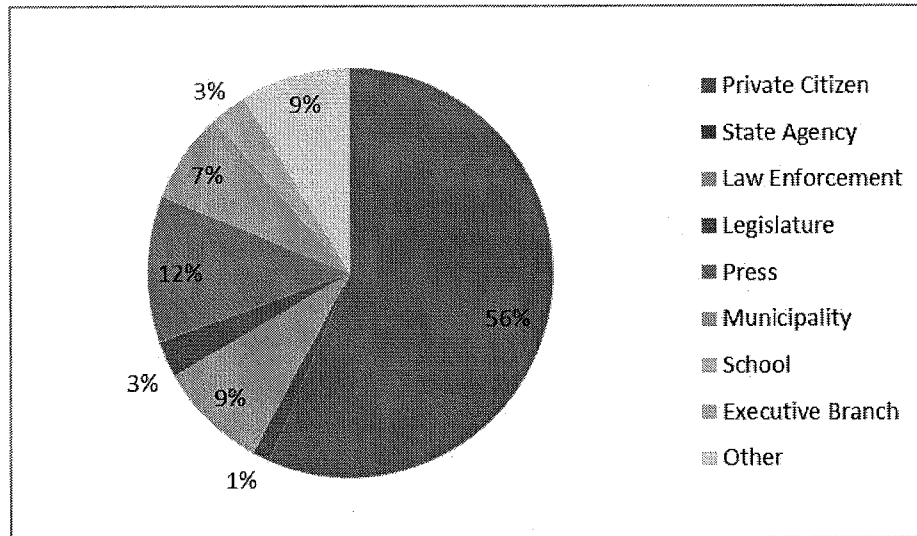
- Notice
- Use of executive session

A citizen complaint about a local board's meeting notice or use of executive session is often part of a complex situation involving other issues such as municipal governance and long-standing disputes for which there may be an inadequate remedy. Resolution of the FOAA complaint may not garner the accountability and change that the citizen could only obtain through the political process. Local officials may see the use of the FOAA as harassing.

The estimated fee and time needed for a response to a FOAA request is frequently challenged as excessive. The requester may suspect that government officials are dragging their feet and should be able to provide the records easily with modern technology. Especially for a broad request involving both paper and electronic documents from multiple departments, the official may have difficulty scheduling the search for responsive records and redaction of confidential information without impacting regular work duties.

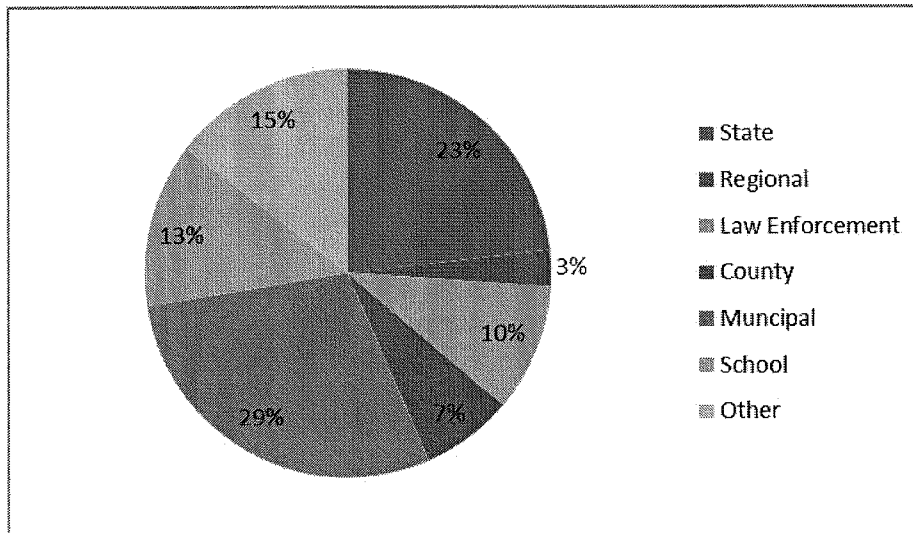
The actual conversion costs of providing an electronic record in the format in which it is stored can exceed what requesters expect. The staff who are responding to the request rely on available technological resources and their current skill level. From a part-time town office to a State agency, the discrepancy between what the requester expects and the response time and cost causes disputes.

Of the 69 inquiries, complaints and suggestions, 39 came from private citizens, 1 from a state agency, 6 from law enforcement agencies, 2 from legislators, 8 from members of the media, 5 from municipal officials, 2 from school officials, and 6 from others including attorneys and commercial requesters.



Source of Inquiries, Complaints and Suggestions

Most of the inquiries and complaints concerned municipalities (20) and State agencies (16). The remainder concerned school administrative units (9), County agencies (5), regional agencies (2), and law enforcement agencies (7). Others (10) concerned court, medical, bank or unspecified records.



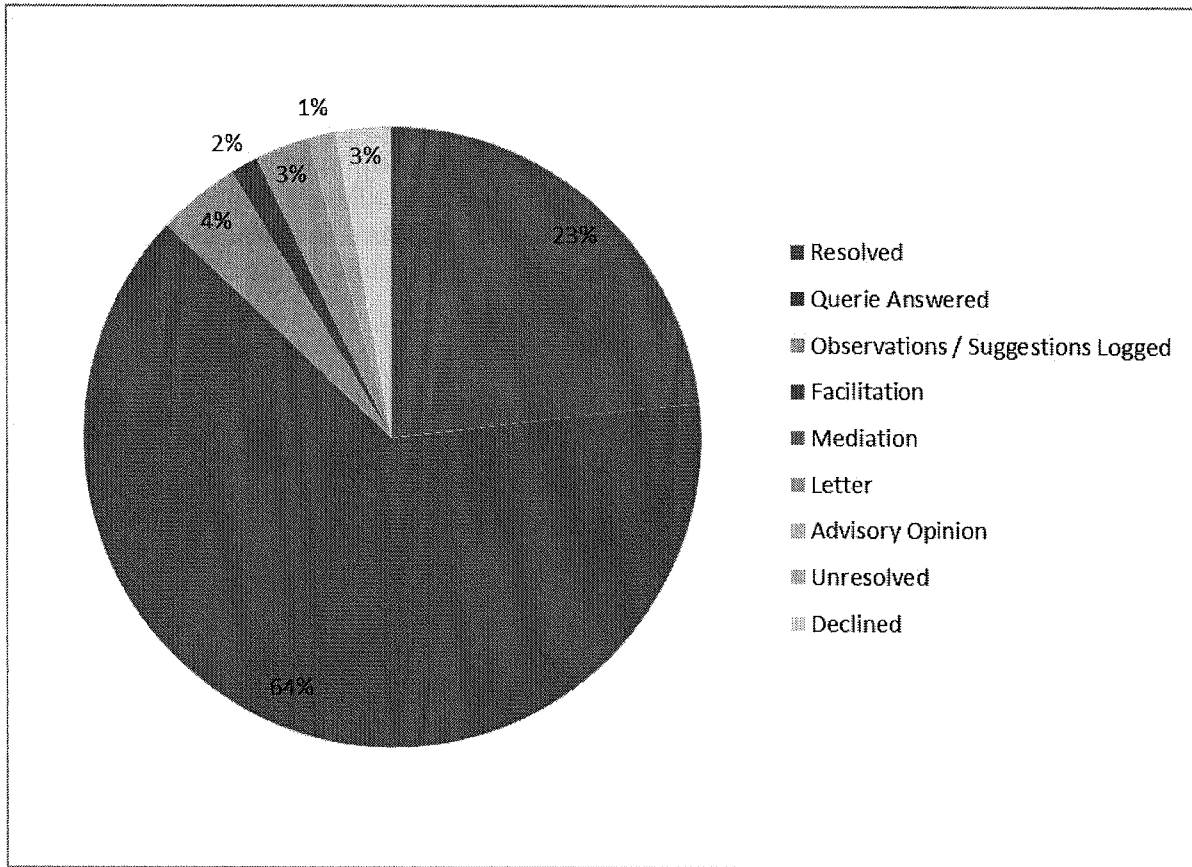
Agencies

A contact may be logged as “resolved” for the following reasons:

- Complaint was deemed unsubstantiated
- Informal discussions or facilitation resulted in an agreement on how to proceed
- Agency offered an acceptable remedy
- Complaint was withdrawn
- Complainant failed to produce requested information
- Ombudsman determined there is other good cause not to proceed

A contact may be logged as “declined” if the subject of the dispute was outside the scope of authority of the ombudsman or related to a matter that was the subject of an administrative or judicial proceeding.

Many of the inquiries (44) were answered either immediately or within a matter of days. Sixteen of the contacts were logged as resolved, three suggestions were taken, one case involved a successful facilitation, two letters were written, one case was unresolved as of the date of this report and two cases were declined.



Outcomes

RECOMMENDATION

The ombudsman is in a unique position to suggest improvements to the FOAA process and is mandated by statute to make recommendations concerning ways to improve public access to public records and proceedings. This report encompasses only the last quarter of 2012 during which time the focus was to identify and build on what was already in place. The following recommendation highlights an area in the law that could be more effectively utilized to promote public access:

The Public Access Officers

The FOAA was amended in 2012 to require each State agency, county, municipality, school administrative unit and regional or other political subdivision to designate an employee to serve as the contact person and resource for freedom of access questions and compliance. The public access officers must participate in the same Freedom of Access training as elected officials. 1 M.R.S. § 412(1). This provision has the potential to create a state-wide network of informed FOAA officials who can share their knowledge within their distinct organizations.

These public access officers could develop more comprehensive data collection to track FOAA requests and responses by agency without imposing costs on local units.

Standardized reporting by agencies would generate the consistent, high-quality data needed to conduct state-wide assessments. Current, reliable and comparable information regarding how the FOAA is being administered would be useful in assessing Maine's progress with open government objectives. One way to ensure that the challenges faced by agencies in processing FOAA requests can be addressed is to expand the duties of the public access officers to include the collection and reporting of this type of data.

Appendix

Maine Revised Statutes

☑ [§200-I PDF](#)

☑ [§200-I WORD/RTF](#)

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§200-H

Title 5:

§201

ADMINISTRATIVE PROCEDURES AND SERVICES

Part 1: STATE DEPARTMENTS Chapter 9: ATTORNEY GENERAL

§200-I. Public Access Division; Public Access Ombudsman

1. Public Access Division; Public Access Ombudsman. There is created within the Department of the Attorney General the Public Access Division to assist in compliance with the State's freedom of access laws, Title 1, chapter 13. The Attorney General shall appoint the Public Access Ombudsman, referred to in this section as "the ombudsman," to administer the division.

[2007, c. 603, §1 (NEW) .]

2. Duties. The ombudsman shall:

A. Prepare and make available interpretive and educational materials and programs concerning the State's freedom of access laws in cooperation with the Right To Know Advisory Committee established in Title 1, section 411; [2007, c. 603, §1 (NEW) .]

B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws; [2007, c. 603, §1 (NEW) .]

C. Respond to and work to resolve complaints made by the public and public agencies and officials concerning the State's freedom of access laws; [2007, c. 603, §1 (NEW) .]

D. Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor and the parties involved; and [2007, c. 603, §1 (NEW) .]

E. Make recommendations concerning ways to improve public access to public records and proceedings. [2007, c. 603, §1 (NEW) .]

[2007, c. 603, §1 (NEW) .]

3. Assistance. The ombudsman may request from any public agency or official such assistance, services and information as will

enable the ombudsman to effectively carry out the responsibilities of this section.

[2007, c. 603, §1 (NEW) .]

4. Confidentiality. The ombudsman may access records that a public agency or official believes are confidential in order to make a recommendation concerning whether the public agency or official may release the records to the public. The ombudsman's recommendation is not binding on the public agency or official. The ombudsman shall maintain the confidentiality of records and information provided to the ombudsman by a public agency or official under this subsection and shall return the records to the public agency or official when the ombudsman's review is complete.

[2007, c. 603, §1 (NEW) .]

5. Report. The ombudsman shall submit a report not later than March 15th of each year to the Legislature and the Right To Know Advisory Committee established in Title 1, section 411 concerning the activities of the ombudsman for the previous year. The report must include:

A. The total number of inquiries and complaints received; [2007, c. 603, §1 (NEW) .]

B. The number of inquiries and complaints received respectively from the public, the media and public agencies or officials; [2007, c. 603, §1 (NEW) .]

C. The number of complaints received concerning respectively public records and public meetings; [2007, c. 603, §1 (NEW) .]

D. The number of complaints received concerning respectively:

(1) State agencies;

(2) County agencies;

(3) Regional agencies;

(4) Municipal agencies;

(5) School administrative units; and

(6) Other public entities; [2007, c. 603, §1 (NEW) .]

E. The number of inquiries and complaints that were resolved; [2007, c. 603, §1 (NEW) .]

F. The total number of written advisory opinions issued and pending; and [2007, c. 603, §1 (NEW) .]

G. Recommendations concerning ways to improve public access to public records and proceedings. [2007, c. 603, §1 (NEW) .]

[2007, c. 603, §1 (NEW) .]

6. Repeal.

[2009, c. 240, §7 (RP) .]

SECTION HISTORY

2007, c. 603, §1 (NEW). 2009, c. 240, §7 (AMD).

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**The Revisor's Office cannot provide legal advice or
interpretation of Maine law to the public.
If you need legal advice, please consult a qualified attorney.**

Office of the Revisor of Statutes

**7 State House Station
State House Room 108
Augusta, Maine 04333-0007**

Judiciary Committee
Freedom of Access, Confidentiality and Privacy Legislation
First Regular Session, 126th Legislature

LD#	Sponsor	Title	Committee report	Disposition
19	Sen. Craven, Margaret	An Act To Facilitate Access to Information by Legislators	ONTP	ONTP
104	Rep. Nelson, Mary	An Act To Amend the Laws Governing Public Records	OTPA/OTP/ONTP	Public Law 2013, c. 339
135	Rep. Brooks, Joseph	An Act To Require All Government Documents To Be Posted on the Internet	ONTP	ONTP
217	Right to Know Advisory Committee	An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Access to Records Relating to Public-private Partnerships	ONTP	ONTP
236	Sen. Patrick, John	An Act to Protect the Privacy of Citizens from Domestic Unmanned Aerial Vehicle Use	OTPA/OTPA	Vetoed
258	Right to Know Advisory Committee	An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies	ONTP	ONTP
309	Rep. Russell, Diane	Resolve, Directing the Attorney General To Implement a Child Identity Protection Program To Safeguard the Personal Information of Minors and Prevent Identity Theft	ONTP	ONTP
313	Rep. Russell, Diane	An Act To Create the Maine Online Privacy Protection Act	ONTP/OTPA	ONTP
345	Rep. Wilson, Corey	An Act To Ensure the Confidentiality of Concealed Weapons Permit Holder Information (EMERGENCY)	OTPA/OTPA	Public Law 2013, c. 54
415	Sen. Katz, Roger	An Act To Require a Warrant To Obtain the Location Information of a Cell Phone or Other Electronic Device	ONTP/OTPA	Public Law 2013, c. 409
420	Right to Know Advisory Committee	An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions	ONTP	ONTP
495	Senator Burns, David	An Act Regarding the Law Pertaining to the Confidentiality of Enhanced 9-1-1 System Information and Records	ONTP/OTPA	ONTP
576	Senator Jackson, Troy	Resolve, To Protect Concealed Handgun Permit Information on a Temporary Basis" (Emergency) (Governor's Bill)		Resolve 2013, c. 1
619	Rep. Guerin, Stacey	An Act To Prohibit the Sharing of Personal Information by State Agencies	OTPA	Public Law 2013, c. 283
684	Rep. MacDonald, W.	An Act To Make Bylaws and Minutes of Board Meetings of Publicly Funded Hospitals Subject to the Freedom of Access Act	ONTP	ONTP
900		An Act Regarding the Disclosure of Certain Records in Criminal Matters	OTP	Public Law 2013, c. 201

Judiciary Committee
Freedom of Access, Confidentiality and Privacy Legislation
First Regular Session, 126th Legislature

LD#	Sponsor	Title	Committee report	Disposition
973	Rep. Briggs, Sheryl	An Act To Make Veterans' Property Tax Exemption Applications Confidential	OTP	Public Law 2013, c. 222 Emergency
1040	Sen. Thomas, Douglas	An Act To Prohibit the Placement of Cameras and Electronic Surveillance Equipment on Private Property without the Written Permission of the Landowner	OTPA	Public Law 2013, c. 382
1091	Sen. Thomas, Douglas	An Act To Require Nonprofit Corporations To Disclose the Salaries of Their Employees	ONTP	ONTP
1118	Rep. Priest, Charles	An Act To Amend Public Access Laws To Improve Accountability for Public Funds by Making Public the Board Meetings of Hospitals Receiving Significant State Funding	ONTP/OTPA	ONTP
1194	Rep. McClellan, Michael	An Act To Protect Social Media Privacy in School and the Workplace	Carryover requested	Carryover approved
1216	Rep. Carey, Michael	An Act To Amend the Freedom of Access Act	OTPA	Public Law 2013, c. 350
1377	Sen. Katz, Roger	An Act To Protect Cellular Telephone Privacy	OTPA/OTPA	Public Law 2013, c. 402
1401	Rep. Kent, Peter	An Act To Make Birth Certificates Public Records	ONTP	ONTP
1511	Sen. Cain, Emily	An Act Regarding Coordinated Access to Public Records of State Agencies	OTP	Public Law 2013, c. 229

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ONTP
see LD 721,
PL C. 208



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 217

H.P. 178

House of Representatives, February 5, 2013

**An Act To Implement the Recommendations of the Right To Know
Advisory Committee Concerning Public Access to Records Relating
to Public-private Partnerships**

Reported by Representative PRIEST of Brunswick for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **Sec. 1. 23 MRSA §4251, sub-§9**, as enacted by PL 2009, c. 648, Pt. A, §1, is
3 amended to read:

4 **9. Legislative approval.** If the department determines that a public-private
5 partnership proposal and draft agreement meets the standards of this subchapter, the
6 department shall publish a notice of the determination on the department's publicly
7 accessible website or through advertisements in newspapers as required in subsection 5,
8 paragraph A. At least 30 days after providing the public notice, the department shall
9 submit to the Legislature a bill that authorizes the agreement. The bill must include a
10 statement that the proposal meets the standards in subsection 4, a summary of the
11 substance of the draft agreement and a description of the nature and amount of state
12 investment, if any, including effects on programmed capital work.

13 **SUMMARY**

14 This bill implements the majority recommendation of the Right To Know Advisory
15 Committee.

16 Current law requires that the Department of Transportation submit to the Legislature
17 a bill that authorizes the agreement that implements a public-private partnership for the
18 development of a transportation facility. This bill requires the department to publish
19 public notice on the department's publicly accessible website or in newspapers when it
20 has determined that a public-private proposal and agreement meets the standards of the
21 Maine Revised Statutes, Title 23, chapter 410, subchapter 5 and to wait at least 30 days
22 after the public notice has been published to submit the bill.

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

H.P. 493 - L.D. 721

**An Act To Provide Transparency in Public-private Partnerships for
Transportation Projects**

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

Sec. 1. 23 MRSA §4251, sub-§4, ¶L, as enacted by PL 2009, c. 648, Pt. A, §1, is repealed.

Sec. 2. 23 MRSA §4251, sub-§10, as enacted by PL 2009, c. 648, Pt. A, §1, is repealed and the following enacted in its place:

10. Information in public record. Except as provided in subsection 10-A, information obtained by the department under this subchapter is a public record pursuant to Title 1, chapter 13, subchapter 1.

Sec. 3. 23 MRSA §4251, sub-§10-A is enacted to read:

10-A. Confidential information. Information submitted to the department relating to a public-private partnership proposal under this subchapter is confidential and not a public record under Title 1, chapter 13, subchapter 1 if the private entity submitting the information designates the information as being only for the confidential use of the department and if:

A. The information is a trade secret as defined in Title 10, section 1542, subsection 4; or

B. Disclosure of the information would result in a business or competitive disadvantage, loss of business, invasion of privacy or other significant detriment to the private entity to whom the record belongs or pertains.

If legal action is filed to gain access to the information designated as confidential under this subsection, the private entity must defend its designation and the department shall release the information in accordance with the order of the reviewing court. Failure to defend the designation under this subsection constitutes a waiver of confidentiality by the private entity and the department shall release the information.



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 258

H.P. 195

House of Representatives, February 5, 2013

**An Act To Implement the Recommendations of the Right To Know
Advisory Committee Concerning Meetings of Public Bodies**

Reported by Representative PRIEST of Brunswick for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **PART A**

3 **Sec. A-1. 1 MRSA §403-A** is enacted to read:

4 **§403-A. Public proceedings through other means of communication**

5 This section governs public proceedings, including executive sessions, during which
6 public or governmental business is discussed or transacted through telephonic, video,
7 electronic or other similar means of communication.

8 **1. Requirements.** A body subject to this subchapter may conduct a public
9 proceeding during which a member of the body participates in the discussion or
10 transaction of public or governmental business through telephonic, video, electronic or
11 other similar means of communication only if the following requirements are met:

12 A. The body has adopted a policy that authorizes a member of the body who is not
13 physically present to participate in a public proceeding through telephonic, video,
14 electronic or other similar means of communication in accordance with this section.
15 The policy may establish circumstances under which a member may participate when
16 not physically present;

17 B. Notice of the public proceeding has been given in accordance with section 406;

18 C. Except as provided in subsection 3, a quorum of the body is assembled physically
19 at the location identified in the notice required by section 406;

20 D. Each member of the body participating in the public proceeding is able to hear all
21 the other members and speak to all the other members during the public proceeding,
22 and members of the public attending the public proceeding in the location identified
23 in the notice required by section 406 are able to hear all members participating from
24 other locations;

25 E. Each member who is not physically present and who is participating through
26 telephonic, video, electronic or other similar means of communication identifies the
27 persons present at the location from which the member is participating;

28 F. All votes taken during the public proceeding are taken by roll call vote; and

29 G. Each member who is not physically present and who is participating through
30 telephonic, video, electronic or other similar means of communication has received
31 prior to the public proceeding any documents or other materials that will be discussed
32 at the public proceeding, with substantially the same content as those documents
33 actually presented. Documents or other materials made available at the public
34 proceeding may be transmitted to the member not physically present during the
35 public proceeding if the transmission technology is available. Failure to comply with
36 this paragraph does not invalidate the action of a body in a public proceeding.

37 **2. Voting; judicial or quasi-judicial proceeding.** A member of a body who is not
38 physically present and who is participating in a judicial or quasi-judicial public
39 proceeding through telephonic, video, electronic or other similar means of

1 communication may not vote on any issue concerning testimony or other evidence
2 provided during the judicial or quasi-judicial public proceeding.

3 **3. Exception to quorum requirement.** A body may convene a public proceeding
4 by telephonic, video, electronic or other similar means of communication without a
5 quorum under subsection 1, paragraph C if:

6 A. An emergency has been declared in accordance with Title 22, section 802,
7 subsection 2-A or Title 37-B, section 742;

8 B. The public proceeding is necessary to take action to address the emergency; and

9 C. The body otherwise complies with the provisions of this section to the extent
10 practicable based on the circumstances of the emergency.

11 **4. Annual meeting.** If a body conducts one or more public proceedings pursuant to
12 this section, it shall also hold at least one public proceeding annually during which
13 members of the body in attendance are physically assembled at one location and where no
14 members of the body participate by telephonic, video, electronic or other similar means
15 of communication from a different location.

16 **PART B**

17 **Sec. B-1. 10 MRSA §384, sub-§5** is enacted to read:

18 **5. Meetings.** The board shall have a physical location for each meeting.
19 Notwithstanding Title 1, section 403-A, board members may participate in meetings by
20 teleconference. Board members participating in the meeting by teleconference are not
21 entitled to vote and are not considered present for the purposes of determining a quorum,
22 except in cases in which the chair of the board determines that the counting of members
23 participating by teleconference and the allowance of votes by those members is necessary
24 to avoid undue hardship to an applicant for an investment.

25 **Sec. B-2. 32 MRSA §88, sub-§1, ¶D**, as amended by PL 2007, c. 274, §19, is
26 further amended to read:

27 D. A majority of the members appointed and currently serving constitutes a quorum
28 for all purposes and no decision of the board may be made without a quorum present.
29 A majority vote of those present and voting is required for board action, except that
30 for purposes of either granting a waiver of any of its rules or deciding to pursue the
31 suspension or revocation of a license, the board may take action only if the proposed
32 waiver, suspension or revocation receives a favorable vote from at least 2/3 of the
33 members present and voting and from no less than a majority of the appointed and
34 currently serving members. ~~The Notwithstanding Title 1, section 403-A, the board~~
35 ~~may use video conferencing and other technologies to conduct its business but is not~~
36 ~~exempt from Title 1, chapter 13, subchapter 1.~~ Members of the board, its
37 subcommittees or its staff may participate in a meeting of the board, subcommittees
38 or staff via video conferencing, conference telephone or similar communications
39 equipment by means of which all persons participating in the meeting can hear each
40 other, and participation in a meeting pursuant to this subsection constitutes presence
41 in person at such meeting.

1 7. Each member who is not physically present and who is participating through
2 telephonic, video, electronic or other similar means of communication must have
3 received, prior to the proceeding, any documents or other materials that will be discussed
4 at the public proceeding, with substantially the same content as those documents actually
5 presented.

6 8. A member of a body who is not physically present may not vote on any issue
7 concerning testimony or other evidence provided during the public proceeding if it is a
8 judicial or quasi-judicial proceeding.

9 9. If a body conducts one or more public proceedings using remote-access
10 technology, the body must also hold at least one public proceeding annually during which
11 all members of the body in attendance are physically assembled at one location.

12 Under current law, the following state agencies are authorized to use remote-access
13 technology to conduct meetings: the Finance Authority of Maine, the Commission on
14 Governmental Ethics and Election Practices, the Emergency Medical Services' Board and
15 the Workers' Compensation Board. Part B provides a specific exemption from the new
16 requirements for the Small Enterprise Growth Board, the Emergency Medical Services'
17 Board and the Workers' Compensation Board.

A.A.B

SENATE

LINDA M. VALENTINO, District 5, Chair
JOHN L. TUTTLE, JR., District 3
DAVID C. BURNS, District 29

MARGARET J. REINSCH, Legislative Analyst
SUSAN Z. JOHANNESMAN, Legislative Analyst
SUSAN M. PINETTE, Committee Clerk



HOUSE

CHARLES R. PRIEST, Brunswick, Chair
KIM MONAGHAN-DERRIG, Cape Elizabeth
JENNIFER DECHANT, Bath
MATTHEW W. MOONEN, Portland
STEPHEN W. MORIARTY, Cumberland
LISA R. VILLA, Harrison
JARROD S. CROCKETT, Bethel
MICHAEL G. BEAULIEU, Auburn
ANITA PEAVEY HASKELL, Milford
STACEY K. GUERIN, Glenburn
WAYNE T. MITCHELL, Penobscot Nation

State of Maine
ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE
COMMITTEE ON JUDICIARY

June 27, 2013

TO: Right to Know Advisory Committee

FROM: Senator Linda M. Valentino, Senate Chair *LD*
Representative Charles R. Priest, House Chair *CP*
Joint Standing Committee on Judiciary

Re: LD 258, An Act To Implement the Recommendations of the Right To Know
Advisory Committee Concerning Meetings of Public Bodies

Thank you for your continued work on the questions surrounding the meeting of public bodies while allowing members to participate remotely. We understand that different public bodies have interpreted the silence in the Freedom of Access Act in different ways: Some entities believe that the lack of permission in the statute therefore prohibits voting when not physically present; others find the lack of prohibition to be instructive, and therefore do allow members to participate and vote via telephone or other electronic connection.

After discussion with those who would be affected by the bill, the Judiciary Committee decided that the proposal could benefit from more input from entities not already specifically authorized to meet via telephone or other technology. For example, the Public Utilities Committee has developed their own process for adjudicatory and other meetings which is not consistent with the statutory exceptions or the proposed bill. We recommend that the Advisory Committee seek more input from public bodies at all levels of government, if you choose to pursue this topic.

There was also some concern voiced in the committee discussions that connecting by telephone alone may not be sufficient to provide full public access to the public proceeding. We hope that your review will include more exploration of what is entailed in the public's right to attend public proceedings.

Again, thank you for your hard work. We look forward to your recommendations.



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 420

H.P. 292

House of Representatives, February 14, 2013

**An Act To Implement the Recommendations of the Right To Know
Advisory Committee Concerning Public Records Exceptions**

Reported by Representative PRIEST of Brunswick for the Joint Standing Committee on
Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph
G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint
Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **Sec. 1. 22 MRSA §1696-D**, as amended by PL 1999, c. 57, Pt. B, §3, is further
3 amended to read:

4 **§1696-D. Response to requests**

5 When requested under this subchapter, the director shall provide, ~~at a minimum, the~~
6 ~~identity of~~ information about chemical substances in use or present at a specific location;
7 ~~unless the substance is a trade secret. For purposes of this section, "trade secret" means~~
8 ~~any confidential formula, pattern, process, device, information or compilation of~~
9 ~~information, including chemical name, that is used in any employer's business that gives~~
10 ~~the employer an opportunity to obtain any advantage over competitors who do not know~~
11 ~~or use it. The director may provide information on~~ must include the identity of the
12 chemical substance, the chronic and acute health hazards posed by the substance,
13 potential routes of exposure, emergency procedures and other subjects as appropriate.
14 The director shall report in writing annually by January 1st to the joint standing
15 committee of the Legislature having jurisdiction over human resources on the number and
16 type of requests received and on the director's response to these requests.

17 ~~In the case of a request for information from a municipality or individual concerning~~
18 ~~chemicals in use or present at a specific site, the director shall be required to provide~~
19 ~~information pursuant to this Act only if the specific site is within a 50-mile radius of the~~
20 ~~municipality or within a 50-mile radius of a residence of the individual requesting the~~
21 ~~information.~~

22 **Sec. 2. 22 MRSA §1696-E**, as enacted by PL 1985, c. 494, §2, is amended to
23 read:

24 **§1696-E. Cooperation with state agencies**

25 The director may obtain, upon request, information from and the assistance of the
26 Bureau of Labor Standards, Department of Environmental Protection, Bureau of
27 Pesticides Control and other state agencies as appropriate in the conduct of investigations
28 under this chapter. ~~Information obtained under this section shall be subject to the trade~~
29 ~~secret provisions governing the agencies supplying the information.~~

30 **Sec. 3. 22 MRSA §1696-F**, as amended by PL 1999, c. 57, Pt. B, §4, is further
31 amended to read:

32 **§1696-F. Provision of information**

33 ~~A person may withhold the identity of a specific toxic or hazardous substance, if the~~
34 ~~substance is a trade secret. For purposes of this section, "trade secret" means any~~
35 ~~confidential formula, pattern, process, device, information or compilation of information,~~
36 ~~including chemical name, that is used in any employer's business that gives the employer~~
37 ~~an opportunity to obtain any advantage over competitors who do not know or use it. All~~
38 ~~other information about a toxic or hazardous substance, including its identity, routes of~~
39 ~~exposure, effects of exposure, type and degree of hazard and emergency treatment and~~

4.A.11

1 response procedures, must be provided if requested by the Director of the Bureau of
2 Health and is considered a public record. All information about a toxic or hazardous
3 substance is a public record.

4 **Sec. 4. 26 MRSA §3**, as amended by PL 2011, c. 655, Pt. DD, §10 and affected by
5 §24, is repealed and the following enacted in its place:

6 **§3. Confidentiality of records**

7 **1. Confidential records.** Except as provided in subsections 2 and 3, all information
8 and reports received by the director or the director's authorized agents under this Title are
9 confidential for purposes of Title 1, section 402, subsection 3, paragraph A.

10 **2. Exceptions.** Information and reports pertaining to final bureau action taken under
11 the authority of this Title are public records for the purposes of Title 1, chapter 13,
12 subchapter 1.

13 **3. Authorized disclosure.** The director shall make or authorize any disclosure of
14 information of the following types or under the following circumstances with the
15 understanding that the confidentiality of the information will be maintained:

16 A. Information and reports to other government agencies if the director believes that
17 the information will serve to further the protection of the public or assist in the
18 enforcement of local, state and federal laws; and

19 B. Information and records pertaining to the workforce, employment patterns, wage
20 rates, poverty and low-income patterns, economically distressed communities and
21 regions and other similar information and data to the Department of Economic and
22 Community Development and to the Governor's Office of Policy and Management
23 for the purposes of analysis and evaluation, measuring and monitoring poverty and
24 economic and social conditions throughout the State and promoting economic
25 development.

26 **Sec. 5. 26 MRSA §934, last ¶**, as enacted by PL 1985, c. 294, §§2 and 3, is
27 amended to read:

28 The board shall hear all interested persons who come before it, advise the respective
29 parties what ought to be done by either or both to adjust the controversy; and ~~shall~~ make a
30 confidential written report to the Governor and the Executive Director of the Maine
31 Labor Relations Board. The Governor or executive director ~~may~~ shall make the report
32 public if, after 15 days from the date of its receipt, the parties have not resolved the
33 controversy and the public interest would be served by publication. In addition, either the
34 Governor or the executive director may refer the report and recommendations of the
35 board to the Attorney General or other department for appropriate action when it appears
36 that any of the laws of this State may have been violated.

37 **Sec. 6. 29-A MRSA §152, sub-§3**, as enacted by PL 1993, c. 683, Pt. A, §2 and
38 affected by Pt. B, §5, is amended to read:

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

7 **Sec. 7. 29-A MRSA §257**, as enacted by PL 2003, c. 434, §6 and affected by §37,
8 is repealed.

9 **Sec. 8. 29-A MRSA §517, sub-§4**, as enacted by PL 1993, c. 683, Pt. A, §2 and
10 affected by Pt. B, §5, is amended to read:

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

15 ~~Upon receipt of a written request by an appropriate criminal justice official showing~~
16 ~~cause that it is in the best interest of public safety, the Secretary of State may determine~~
17 ~~that records of a nongovernment vehicle may be held confidential for a specific period of~~
18 ~~time, which may not exceed the expiration of the current registration.~~

19 **Sec. 9. 38 MRSA §585-B, sub-§6**, as amended by PL 2009, c. 535, §2, is further
20 amended to read:

21 **6. Mercury reduction plans.** An air emission source emitting mercury in excess of
22 10 pounds per year after January 1, 2007 must develop a mercury reduction plan. Except
23 as provided in subsection 7, the mercury reduction plan must be submitted to the
24 department no later than September 1, 2008. The mercury reduction plan must contain:

- 25 A. Identification, characterization and accounting of the mercury used or released at
26 the emission source; and
- 27 B. Identification, analysis and evaluation of any appropriate technologies,
28 procedures, processes, equipment or production changes that may be utilized by the
29 emission source to reduce the amount of mercury used or released by that emission
30 source, including a financial analysis of the costs and benefits of reducing the amount
31 of mercury used or released.

32 ~~The department may keep information submitted to the department under this subsection~~
33 ~~confidential as provided under section 1310-B.~~

34 The department shall submit a report to the joint standing committee of the Legislature
35 having jurisdiction over natural resources matters no later than March 1, 2009
36 summarizing the mercury emissions and mercury reduction potential from those emission
37 sources subject to this subsection. In addition, the department shall include an evaluation
38 of the appropriateness of the 25-pound mercury standard established in subsection 5. The
39 evaluation must address, but is not limited to, the technological feasibility, cost and
40 schedule of achieving the standards established in subsection 5. The department shall
41 submit an updated report to the committee by March 1, 2013. The joint standing

4.A.13

1 committee of the Legislature having jurisdiction over natural resources matters is
2 authorized to report out to the 126th Legislature a bill relating to the evaluation and the
3 updated report.

4 **Sec. 10. 38 MRSA §585-C, sub-§2, ¶D**, as affected by PL 1989, c. 890, Pt. A,
5 §40 and amended by Pt. B, §160, is repealed.

6 **Sec. 11. 38 MRSA §1310-B, sub-§2**, as repealed and replaced by PL 2011, c.
7 420, Pt. A, §35 and amended by c. 657, Pt. W, §5, is further amended to read:

8 **2. Hazardous waste information and information on mercury-added products**
9 **and electronic devices and mercury reduction plans; chemicals.** Information relating
10 to hazardous waste submitted to the department under this subchapter, information
11 relating to mercury-added products submitted to the department under chapter 16-B,
12 information relating to electronic devices submitted to the department under section 1610,
13 subsection 6-A, ~~information relating to mercury reduction plans submitted to the~~
14 ~~department under section 585-B, subsection 6~~; information related to priority toxic
15 chemicals submitted to the department under chapter 27 or information related to
16 products that contain the "deca" mixture of polybrominated diphenyl ethers submitted to
17 the department under section 1609 may be designated by the person submitting it as being
18 only for the confidential use of the department, its agents and employees, the Department
19 of Agriculture, Conservation and Forestry and the Department of Health and Human
20 Services and their agents and employees, other agencies of State Government, as
21 authorized by the Governor, employees of the United States Environmental Protection
22 Agency and the Attorney General and, for waste information, employees of the
23 municipality in which the waste is located. The designation must be clearly indicated on
24 each page or other portion of information. The commissioner shall establish procedures
25 to ensure that information so designated is segregated from public records of the
26 department. The department's public records must include the indication that information
27 so designated has been submitted to the department, giving the name of the person
28 submitting the information and the general nature of the information. Upon a request for
29 information, the scope of which includes information so designated, the commissioner
30 shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall
31 demonstrate to the satisfaction of the department that the designated information should
32 not be disclosed because the information is a trade secret or production, commercial or
33 financial information, the disclosure of which would impair the competitive position of
34 the submitter and would make available information not otherwise publicly available.
35 Unless such a demonstration is made, the information must be disclosed and becomes a
36 public record. The department may grant or deny disclosure for the whole or any part of
37 the designated information requested and within 15 days shall give written notice of the
38 decision to the submitter and the person requesting the designated information. A person
39 aggrieved by a decision of the department may appeal only to the Superior Court in
40 accordance with the provisions of section 346. All information provided by the
41 department to the municipality under this subsection is confidential and not a public
42 record under Title 1, chapter 13. In the event a request for such information is submitted
43 to the municipality, the municipality shall submit that request to the commissioner to be
44 processed by the department as provided in this subsection.

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SUMMARY

This bill implements the recommendations of the Right To Know Advisory Committee relating to existing public records exceptions in the Maine Revised Statutes, Titles 22, 26, 29-A and 38. The bill does the following.

It clarifies that all the information provided upon request to the Director of the Bureau of Health within the Department of Health and Human Services about toxic or hazardous substances in use or present at a specific location is public. It requires the director to release the information that is public upon request to any requester, and it repeals the requirement that the requester reside within 50 miles of the specific location.

It makes clear that reports of final bureau action of the Bureau of Labor Standards within the Department of Labor are public records, removing the language in current law that gives the Director of the Bureau of Labor Standards the discretion to release reports.

It requires that a report of the State Board of Arbitration and Conciliation in a labor dispute must be released 15 days after its receipt by the Governor and the Executive Director of the Maine Labor Relations Board if the conciliation process is not successful.

It repeals language authorizing the Secretary of State to adopt rules relating to maintenance and use of data processing files concerning motor vehicles as the confidentiality of personal information is already protected under federal law.

It repeals a provision relating to the Secretary of State's motor vehicle information technology system because the confidentiality of the system is already addressed in another provision of law.

It removes language regarding confidentiality of records for unmarked law enforcement vehicles that is redundant with another section of law.

It repeals language making mercury reduction plans for air emission sources emitting mercury confidential.

It repeals language making hazardous air pollutant emissions inventory reports confidential.

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

H.P. 1070 - L.D. 1493

**An Act To Revise the Laws Concerning Criminal History Record
Information and Intelligence and Investigative Information**

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

PART A

Sec. A-1. 16 MRSA c. 3, sub-c. 8, as amended, is repealed.

Sec. A-2. 16 MRSA c. 7 is enacted to read:

CHAPTER 7

CRIMINAL HISTORY RECORD INFORMATION ACT

§701. Short title

This chapter may be known and cited as "the Criminal History Record Information Act."

§702. Scope; application

This chapter governs the dissemination of criminal history record information by a Maine criminal justice agency. This chapter establishes 2 distinct categories of criminal history record information and provides for the dissemination of each:

1. **Public criminal history record information.** Public criminal history record information, the dissemination of which is governed by section 704; and

2. **Confidential criminal history record information.** Confidential criminal history record information, the dissemination of which is governed by section 705.

§703. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

4.B

1. Administration of criminal justice. "Administration of criminal justice" means activities relating to the apprehension or summoning, detention, pretrial release, post-trial release, prosecution, adjudication, sentencing, correctional custody and supervision or rehabilitation of accused persons or convicted criminal offenders. "Administration of criminal justice" includes the collection, storage and dissemination of criminal history record information.

2. Confidential criminal history record information. "Confidential criminal history record information" means criminal history record information of the following types:

A. Unless the person remains a fugitive from justice, summons and arrest information without disposition if an interval of more than one year has elapsed since the date the person was summonsed or arrested and no active prosecution of a criminal charge stemming from the summons or arrest is pending;

B. Information disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor;

C. Information disclosing that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings;

D. Information disclosing that a grand jury has determined that there is insufficient evidence to warrant the return of a formal charge;

E. Information disclosing that a criminal proceeding has been indefinitely postponed or dismissed because the person charged is found by the court to be mentally incompetent to stand trial or to be sentenced;

F. Information disclosing that a criminal charge has been filed, if the filing period is indefinite or for more than one year;

G. Information disclosing that a criminal charge has been dismissed by a court with prejudice or dismissed with finality by a prosecutor other than as part of a plea agreement;

H. Information disclosing that a person has been acquitted of a criminal charge. A verdict or accepted plea of not criminally responsible by reason of insanity, or its equivalent, is not an acquittal of the criminal charge;

I. Information disclosing that a criminal proceeding has terminated in a mistrial with prejudice;

J. Information disclosing that a criminal proceeding has terminated based on lack of subject matter jurisdiction;

K. Information disclosing that a criminal proceeding has been terminated because the court lacked jurisdiction over the defendant; and

L. Information disclosing that a person has been granted a full and free pardon or amnesty.

3. Criminal history record information. "Criminal history record information" means information of record collected by a criminal justice agency or at the direction of a

criminal justice agency or kept in the custody of a criminal justice agency that connects a specific, identifiable person, including a juvenile treated by statute as an adult for criminal prosecution purposes, with formal involvement in the criminal justice system either as an accused or as a convicted criminal offender. "Criminal history record information" includes, but is not limited to, identifiable descriptions or notations of: summonses and arrests; detention; bail; formal criminal charges such as complaints, informations and indictments; any disposition stemming from such charges; post-plea or post-adjudication sentencing; involuntary commitment; execution of and completion of any sentencing alternatives imposed; release and discharge from involuntary commitment; any related pretrial and post-trial appeals, collateral attacks and petitions; and petitions for and warrants of pardons, commutations, reprieves and amnesties. "Criminal history record information" does not include: identification information such as fingerprints, palmprints, footprints or photographic records to the extent that the information does not indicate formal involvement of the specific individual in the criminal justice system; information of record of civil proceedings, including traffic infractions and other civil violations; intelligence and investigative record information as defined in section 803; or information of record of juvenile crime proceedings or their equivalent. Specific information regarding a juvenile crime proceeding is not criminal history record information notwithstanding that a juvenile has been bound over and treated as an adult or that by statute specific information regarding a juvenile crime proceeding is usable in a subsequent adult criminal proceeding. "Formal involvement in the criminal justice system either as an accused or as a convicted criminal offender" means being within the jurisdiction of the criminal justice system commencing with arrest, summons or initiation of formal criminal charges and concluding with the completion of every sentencing alternative imposed as punishment or final discharge from an involuntary commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent.

4. Criminal justice agency. "Criminal justice agency" means a federal, state or State of Maine government agency or any subunit of a government agency at any governmental level that performs the administration of criminal justice pursuant to a statute or executive order. "Criminal justice agency" includes federal courts, Maine courts, courts in any other state, the Department of the Attorney General, district attorneys' offices and the equivalent departments or offices in any federal or state jurisdiction. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government and the government of any federally recognized Indian tribe.

5. Disposition. "Disposition" means information of record disclosing that a criminal proceeding has been concluded, although not necessarily finalized, and the specific nature of the concluding event. "Disposition" includes, but is not limited to: an acquittal; a dismissal, with or without prejudice; the filing of a charge by agreement of the parties or by a court; the determination that a defendant is currently a fugitive from justice; a conviction, including the acceptance by a court of a plea of guilty or nolo contendere; a deferred disposition; a proceeding indefinitely continued or dismissed due to a defendant's incompetence; a finding of not criminally responsible by reason of insanity or its equivalent; a mistrial, with or without prejudice; a new trial ordered; an arrest of judgment; a sentence imposition; a resentencing ordered; an execution of and completion of any sentence alternatives imposed, including but not limited to fines, restitution,

correctional custody and supervision, and administrative release; a release or discharge from a commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent; the death of the defendant; any related pretrial and post-trial appeals, collateral attacks and petitions; a pardon, commutation, reprieve or amnesty; and extradition. "Disposition" also includes information of record disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor, that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings or that a grand jury has determined that there is insufficient evidence to warrant the return of a formal charge.

6. Dissemination. "Dissemination" means the transmission of information by any means, including but not limited to orally, in writing or electronically, by or to anyone outside the criminal justice agency that maintains the information.

7. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access.

8. Public criminal history record information. "Public criminal history record information" means criminal history record information that is not confidential criminal history record information, including information recorded pursuant to section 706.

9. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam and American Samoa. "State" also includes the federal government of Canada and any provincial government of Canada and the government of any federally recognized Indian tribe.

10. Statute. "Statute" means an Act of Congress or an act of a state legislature or a provision of the Constitution of the United States or the constitution of a state.

§704. Dissemination of public criminal history record information

1. Generally. Public criminal history record information is public for purposes of Title 1, chapter 13. Public criminal history record information may be disseminated by a Maine criminal justice agency to any person or public or private entity for any purpose. Public criminal history record information is public whether it relates to a crime for which a person is currently within the jurisdiction of the criminal justice system or it relates to a crime for which a person is no longer within that jurisdiction. There is no time limitation on dissemination of public criminal history record information.

2. Required inquiry to State Bureau of Identification. A Maine criminal justice agency, other than a court, shall query the Department of Public Safety, State Bureau of Identification before disseminating any public criminal history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. "Noncriminal justice purpose" means a purpose other than for the administration of criminal justice or criminal justice agency employment.

§705. Dissemination of confidential criminal history record information

1. Generally. A Maine criminal justice agency, whether directly or through any intermediary, may disseminate confidential criminal history record information only to:

A. Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;

B. Any person for any purpose when expressly authorized by a statute, executive order, court rule, court decision or court order containing language specifically referring to confidential criminal history record information or one or more of the types of confidential criminal history record information;

C. Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement must specifically authorize access to data, limit the use of the data to purposes for which given, ensure security and confidentiality of the data consistent with this chapter and provide sanctions for any violations;

D. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement must specifically authorize access to confidential criminal history record information, limit the use of the information to research, evaluation or statistical purposes, ensure the confidentiality and security of the information consistent with this chapter and provide sanctions for any violations;

E. Any person who makes a specific inquiry to the criminal justice agency as to whether a named individual was summonsed, arrested or detained or had formal criminal charges initiated on a specific date;

F. The public for the purpose of announcing the fact of a specific disposition that is confidential criminal history record information, other than that described in section 703, subsection 2, paragraph A, within 30 days of the date of occurrence of that disposition or at any point in time if the person to whom the disposition relates specifically authorizes that it be made public; and

G. A public entity for purposes of international travel, such as issuing visas and granting of citizenship.

2. Confirming existence or nonexistence of information. A Maine criminal justice agency may not confirm the existence or nonexistence of confidential criminal history record information to any person or public or private entity that would not be eligible to receive the information itself.

3. Required inquiry to State Bureau of Identification. A Maine criminal justice agency, other than a court, shall query the Department of Public Safety, State Bureau of Identification before disseminating any confidential criminal history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. "Noncriminal justice purpose" means a purpose other than for the administration of criminal justice or criminal justice agency use.

§706. Public information about persons detained following arrest

1. Requirement of record. A Maine criminal justice agency that maintains a holding facility, as defined in Title 34-A, section 1001, subsection 9, or other facility for pretrial detention shall record the following information concerning each person delivered to it for pretrial detention for any period of time:

- A. The identity of the arrested person, including the person's name, year of birth, residence and occupation, if any;
- B. The statutory or customary description of the crime or crimes for which the person was arrested including the date and geographic location where the crime is alleged to have occurred;
- C. The date, time and place of the arrest; and
- D. The circumstances of the arrest including, when applicable, the physical force used in making the arrest, the resistance made to the arrest, what weapons were involved, the arrested person's refusal to submit and the pursuit by the arresting officers.

2. Time and method of recording. A Maine criminal justice agency shall record the information under subsection 1 immediately upon delivery of an arrested person to the criminal justice agency for detention. The criminal justice agency shall record and maintain the information in chronological order and keep the information in a suitable, permanent record. The information required by this section may be combined by a sheriff with the record required by Title 30-A, section 1505.

3. Information public. The information required to be recorded and maintained by this section is public criminal history record information.

§707. Unlawful dissemination of confidential criminal history record information

1. Offense. A person is guilty of unlawful dissemination of confidential criminal history record information if the person intentionally disseminates confidential criminal history record information knowing it to be in violation of any of the provisions of this chapter.

2. Classification. Unlawful dissemination of confidential criminal history record information is a Class E crime.

§708. Inapplicability of this chapter to criminal history record information contained in certain records

This chapter does not apply to criminal history record information contained in:

1. Posters, announcements, lists. Posters, announcements or lists used for identifying or apprehending fugitives from justice or wanted persons;

2. Records of entry. Records of entry, such as calls for service, formerly known as "police blotters," that are maintained by criminal justice agencies, that are compiled and

organized chronologically and that are required by law or long-standing custom to be made public:

3. Records of public judicial proceedings. Records of public judicial proceedings:

A. Retained at or by the District Court, Superior Court or Supreme Judicial Court. Public access to and dissemination of such records for inspection and copying are as provided by rule or administrative order of the Supreme Judicial Court; and

B. From federal courts and courts of other states:

4. Published opinions. Published court or administrative opinions not impounded or otherwise declared confidential:

5. Records of public proceedings. Records of public administrative or legislative proceedings:

6. Records of traffic crimes. Records of traffic crimes maintained by the Secretary of State or by a state department of transportation or motor vehicles or the equivalent thereof for the purposes of regulating the issuance, suspension, revocation or renewal of a driver's, pilot's or other operator's license; and

7. Pardons, commutations, reprieves and amnesties. Petitions for and warrants of pardons, commutations, reprieves and amnesties.

§709. Right to access and review

1. Inspection. If a Maine criminal justice agency maintains criminal history record information about a person, the person or the person's attorney may inspect the criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary to ensure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The criminal justice agency shall supply the person or the person's attorney with a copy of the criminal history record information pertaining to the person on request and payment of a reasonable fee.

2. Review. A person or the person's attorney may request amendment or correction of criminal history record information concerning the person by addressing, either in person or in writing, the request to the criminal justice agency in which the information is maintained. The request must indicate the particular record involved, the nature of the amendment or correction sought and the justification for the amendment or correction.

On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned criminal history record information is accurate and complete. If investigation reveals that the questioned criminal history record information is inaccurate or incomplete, the criminal justice agency shall immediately correct the error or deficiency.

Not later than 15 days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a request, the criminal justice agency shall notify the requesting person in writing either that the criminal justice agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal must include the reasons for the refusal, the procedure established by the criminal justice agency for requesting a review by the head of the criminal justice agency of that refusal and the name and business address of that official.

3. Administrative appeal. If there is a request for review, the head of the criminal justice agency shall, not later than 30 days from the date of the request, excluding Saturdays, Sundays and legal public holidays, complete the review and either make the requested amendment or correction or refuse to do so. If the head of the criminal justice agency refuses to make the requested amendment or correction, the head of the criminal justice agency shall permit the requesting person to file with the criminal justice agency a concise statement setting forth the reasons for the disagreement with the refusal. The head of the criminal justice agency shall also notify the person of the provisions for judicial review of the reviewing official's determination under subsection 4.

Disputed criminal history record information disseminated by the criminal justice agency with which the requesting person has filed a statement of disagreement must clearly reflect notice of the dispute after the filing of such a statement. A copy of the statement must be included, along with, if the criminal justice agency determines it appropriate, a copy of a concise statement of the criminal justice agency's reasons for not making the amendment or correction requested.

4. Judicial review. If an administrative appeal brought pursuant to subsection 3 is denied by the head of the criminal justice agency, that decision is final agency action subject to appeal to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

5. Notification. When a criminal justice agency has amended or corrected a person's criminal history record information in response to a written request as provided in subsection 2 or a court order, the criminal justice agency shall, within 30 days thereof, advise all prior recipients who have received that information within the year prior to the amendment or correction that the amendment or correction has been made. The criminal justice agency shall also notify the person who is the subject of the amended or corrected criminal history record information of compliance with this subsection and the prior recipients notified.

6. Right of access and review of court records. This section does not apply to the right of access and review by a person or the person's attorney of criminal history record information about that person retained at or by the District Court, Superior Court or Supreme Judicial Court. Access and review of court records retained by the District Court, Superior Court or Supreme Judicial Court are as provided by rule or administrative order of the Supreme Judicial Court.

§710. Application to prior Maine criminal history record information

The provisions of this chapter apply to criminal history record information in existence before July 29, 1976, including that which has been previously expunged under

any other provision of Maine law, as well as to criminal history record information in existence on July 29, 1976 and thereafter.

Sec. A-3. 16 MRSA c. 9 is enacted to read:

CHAPTER 9

INTELLIGENCE AND INVESTIGATIVE RECORD INFORMATION ACT

§801. Short title

This chapter may be known and cited as "the Intelligence and Investigative Record Information Act."

§802. Application

This chapter applies to a record that is or contains intelligence and investigative record information and that is collected by or prepared at the direction of or kept in the custody of any Maine criminal justice agency.

§803. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Administration of civil justice. "Administration of civil justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known, suspected or possible civil violations and prospective and pending civil actions. It includes the collection, storage and dissemination of intelligence and investigative record information relating to the administration of civil justice. "Administration of civil justice" does not include known, suspected or possible traffic infractions.

2. Administration of criminal justice. "Administration of criminal justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known, suspected or possible crimes. It includes the collection, storage and dissemination of intelligence and investigative record information relating to the administration of criminal justice.

3. Administration of juvenile justice. "Administration of juvenile justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known, suspected or possible juvenile crimes. "Administration of juvenile justice" includes the collection, storage and dissemination of intelligence and investigative information relating to the administration of juvenile justice.

4. Criminal justice agency. "Criminal justice agency" means a federal, state or State of Maine government agency or any subunit of a government agency at any governmental level that performs the administration of criminal justice pursuant to a statute or executive order. "Criminal justice agency" includes the Department of the Attorney General, district attorneys' offices and the equivalent departments or offices in any federal or state jurisdiction. "Criminal justice agency" also includes any equivalent

agency at any level of Canadian government and the government of any federally recognized Indian tribe.

5. Dissemination. "Dissemination" means the transmission of information by any means, including but not limited to orally, in writing or electronically, by or to anyone outside the criminal justice agency that maintains the information.

6. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access.

7. Intelligence and investigative record information. "Intelligence and investigative record information" means information of record collected by or prepared by or at the direction of a criminal justice agency or kept in the custody of a criminal justice agency while performing the administration of criminal justice or, exclusively for the Department of the Attorney General and district attorneys' offices, the administration of civil justice. "Intelligence and investigative record information" includes information of record concerning investigative techniques and procedures and security plans and procedures prepared or collected by a criminal justice agency or other agency. "Intelligence and investigative record information" does not include criminal history record information as defined in section 703, subsection 3 and does not include information of record collected or kept while performing the administration of juvenile justice.

8. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam and American Samoa. "State" also includes the federal government of Canada and any provincial government of Canada and the government of any federally recognized Indian tribe.

9. Statute. "Statute" means an Act of Congress or an act of a state legislature or a provision of the Constitution of the United States or the constitution of a state.

§804. Limitation on dissemination of intelligence and investigative record information

Except as provided in sections 805 and 806, a record that contains intelligence and investigative record information is confidential and may not be disseminated by a criminal justice agency to any person or public or private entity if there is a reasonable possibility that public release or inspection of the record would:

1. Interfere with criminal law enforcement proceedings. Interfere with law enforcement proceedings relating to crimes;

2. Result in dissemination of prejudicial information. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;

3. Constitute an invasion of privacy. Constitute an unwarranted invasion of personal privacy;

4. Disclose confidential source. Disclose the identity of a confidential source;

5. Disclose confidential information. Disclose confidential information furnished only by a confidential source;

6. Disclose trade secrets or other confidential commercial or financial information. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information, by the Department of the Attorney General or by a district attorney's office;

7. Disclose investigative techniques or security plans. Disclose investigative techniques and procedures or security plans and procedures not known by the general public;

8. Endanger law enforcement or others. Endanger the life or physical safety of any individual, including law enforcement personnel;

9. Disclose statutorily designated confidential information. Disclose information designated confidential by statute;

10. Interfere with civil proceedings. Interfere with proceedings relating to civil violations, civil enforcement proceedings and other civil proceedings conducted by the Department of the Attorney General or by a district attorney's office;

11. Disclose arbitration or mediation information. Disclose conduct of or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General; or

12. Identify source of consumer or antitrust complaints. Identify the source of a complaint made to the Department of the Attorney General regarding a violation of consumer or antitrust laws.

§805. Exceptions

This chapter does not preclude dissemination of intelligence and investigative record information that is confidential under section 804 by a Maine criminal justice agency to:

1. Another criminal justice agency. Another criminal justice agency;

2. A person or entity for purposes of intelligence gathering or ongoing investigation. A person or public or private entity as part of the criminal justice agency's administration of criminal justice or the administration of civil justice by the Department of the Attorney General or a district attorney's office;

3. An accused person or that person's agent or attorney. A person accused of a crime or that person's agent or attorney for trial and sentencing purposes if authorized by:

A. The responsible prosecutorial office or prosecutor; or

B. A court rule or court order of this State or of the United States.

As used in this subsection, "agent" means a licensed professional investigator, an expert witness or a parent, foster parent or guardian if the accused person has not attained 18 years of age;

4. Court. A federal court, the District Court, Superior Court or Supreme Judicial Court or an equivalent court in another state;

5. An authorized person or entity. A person or public or private entity expressly authorized to receive the intelligence and investigative record information by statute, executive order, court rule, court decision or court order. "Express authorization" means language in the statute, executive order, court rule, court decision or court order that specifically speaks of intelligence and investigative record information or specifically refers to a type of intelligence or investigative record; or

6. Secretary of State. The Secretary of State for use in the determination and issuance of a driver's license suspension.

§806. Exceptions subject to reasonable limitations

Subject to reasonable limitations imposed by a Maine criminal justice agency to protect against the harms described in section 804, this chapter does not preclude dissemination of intelligence and investigative record information confidential under section 804 by a Maine criminal justice agency to:

1. A government agency responsible for investigating child or adult abuse, neglect or exploitation. A government agency or subunit of a government agency in this State or another state that pursuant to statute is responsible for investigating abuse, neglect or exploitation of children or incapacitated or dependent adults if the intelligence and investigative record information is used in the investigation of suspected abuse, neglect or exploitation;

2. A crime victim or that victim's agent or attorney. A crime victim or that victim's agent or attorney. As used in this subsection, "agent" means a licensed professional investigator or an immediate family member if due to death, age or physical or mental disease, disorder or defect the victim cannot realistically act on the victim's own behalf; or

3. A counselor or advocate. A sexual assault counselor, as defined in section 53-A, subsection 1, paragraph B, or an advocate, as defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice agency. An agreement between a criminal justice agency and a sexual assault counselor or an advocate must, at a minimum, include provisions that:

A. Permit the sexual assault counselor or advocate to use a report or record that contains intelligence and investigative record information if the intelligence and investigative record information is used in planning for the safety of a victim named in the report or record;

B. Prohibit the sexual assault counselor or advocate from further disseminating a report or record that contains intelligence and investigative record information;

C. Require the sexual assault counselor or advocate to ensure that a report or record that contains intelligence and investigative record information remain secure and confidential;

D. Require the sexual assault counselor or advocate to destroy a report or record that contains intelligence and investigative record information within 30 days after the sexual assault counselor's or advocate's receiving the report or record;

E. Permit the criminal justice agency to perform reasonable and appropriate audits in order to ensure that a report or record containing intelligence and investigative record information that are obtained by and that are in the custody of the sexual assault counselor or advocate are maintained in accordance with the requirements of this subsection;

F. Require the sexual assault counselor or advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative record information;

G. Permit a criminal justice agency to immediately and unilaterally revoke an agreement made under this subsection; and

H. Provide sanctions for any violations of this subsection.

The Commissioner of Public Safety may adopt a model agreement pursuant to this subsection for use by criminal justice agencies, sexual assault counselors and advocates.

§807. Confirming existence or nonexistence of confidential intelligence and investigative record information

A criminal justice agency may not confirm the existence or nonexistence of intelligence and investigative record information confidential under section 804 to any person or public or private entity that is not eligible to receive the information itself.

§808. No right to access or review

A person who is the subject of intelligence and investigative record information maintained by a criminal justice agency has no right to inspect or review that information for accuracy or completeness.

§809. Unlawful dissemination of intelligence and investigative record information

1. **Offense.** A person is guilty of unlawful dissemination of intelligence and investigative record information if the person intentionally disseminates intelligence and investigative record information knowing it to be in violation of any of the provisions of this chapter.

2. **Classification.** Unlawful dissemination of intelligence and investigative record information is a Class E crime.

PART B

Sec. B-1. 1 MRSA §402, sub-§3-A, as amended by PL 2001, c. 477, §1, is further amended to read:

3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:

- A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, ~~conviction data~~ public criminal history record information, as defined in Title 16, section 703, subsection 8, address of furlough and dates of furlough;
- B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, ~~conviction data~~ public criminal history record information, as defined in Title 16, section 703, subsection 8, address of residence and dates of supervision; and
- C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, ~~conviction data~~ public criminal history record information, as defined in Title 16, section 703, subsection 8, and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information.

Sec. B-2. 5 MRSA §19506, sub-§1, as amended by PL 2001, c. 357, §13, is further amended to read:

1. Records. Agency personnel must be granted access to all records, reports and supporting information, other than records, reports and supporting information created in the course of an ongoing criminal investigation by the Attorney General, a district attorney's office or a law enforcement agency or records, reports and supporting information designated as confidential by Title 16, section ~~614~~ 804, that:

- A. Pertain to a person who is a client of the agency, if the person or the person's legal guardian or other legal representative has authorized the agency to have that access;
- C. Describe incidents of abuse, exploitation, neglect or injury, and the steps taken to investigate those incidents, prepared by any staff person of any facility serving persons with disabilities or by any agency charged with investigating allegations of abuse, exploitation, neglect and injury occurring at facilities that serve persons with disabilities; or
- D. Pertain to an individual who is or was a person with a disability and who is the subject of a complaint received by the agency or who, as a result of monitoring or other activities resulting from a complaint or other evidence, the agency has probable cause to believe has been or is being abused, exploited or neglected and who:
 - (1) By reason of a mental or physical condition is unable to authorize the agency to have access and is either under public guardianship or without a legal guardian or other representative who may authorize the agency to have access;
 - (2) Has a legal guardian, conservator or other legal representative who has been contacted by the agency upon receipt of the name and address of the guardian,

conservator or representative, and the agency has offered assistance to that person to resolve the situation, and that person has failed or refused to act on behalf of the individual; or

(3) Is deceased or whose whereabouts are unknown.

Agency personnel must be given access to the records of a person with a disability and other records relevant to conducting an investigation within 3 business days of the agency making a written request. When the agency determines there is probable cause to believe that the health or safety of the person is in serious or immediate jeopardy or in event of the death of a person with a disability, the agency must be given access to records within 24 hours of the agency making a written request.

Sec. B-3. 9-A MRSA §13-115, sub-§1, ¶A, as enacted by PL 2009, c. 362, Pt. B, §1, is amended to read:

A. Criminal, civil and administrative information, including ~~nonconviction data~~ confidential criminal history record information as defined in Title 16, section ~~614 703~~, subsection ~~9 2~~;

Sec. B-4. 10 MRSA §8003-B, sub-§3, as amended by PL 1993, c. 719, §4 and affected by §12, is further amended to read:

3. Attorney General records. The provision or disclosure of investigative records of the Department of the Attorney General to a departmental employee designated by the commissioner or to a complaint officer of a board or commission does not constitute a waiver of the confidentiality of those records for any other purposes. Further disclosure of those investigative records is subject to Title 16, section ~~614 804~~ and the discretion of the Attorney General.

Sec. B-5. 15 MRSA §709, sub-§1-A, as enacted by PL 1987, c. 680, §1, is amended to read:

1-A. Administration of criminal justice. "Administration of criminal justice" has the same meaning as in Title 16, section ~~614 703~~, subsection 1.

Sec. B-6. 15 MRSA §3308, sub-§7, ¶A, as enacted by PL 1985, c. 426, is amended to read:

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

(1) "Administration of criminal justice" has the same meaning as found in Title 16, section ~~614 703~~, subsection 1.

(2) "Administration of juvenile criminal justice" means ~~detection,~~ activities related to the apprehension or summoning, detention, conditional or unconditional release, informal adjustment, initial appearance, bind over, adjudication ~~or~~, disposition, custody and supervision or rehabilitation of accused juveniles or adjudicated juvenile criminal offenders. It includes ~~juvenile crime identification activities and~~ the collection, storage and dissemination of juvenile crime information.

(3) "Criminal justice agency" has the same meaning as found in Title 16, section ~~611~~ 703, subsection 4.

(4) "Dissemination" has the same meaning as found in Title 16, section ~~611~~ 703, subsection 6.

Sec. B-7. 16 MRSA §614, sub-§3, ¶D, as amended by PL 2009, c. 181, §2, is further amended to read:

D. A victim or victim's agent or attorney, subject to reasonable limitations to protect the interest described in subsection 1; ~~or~~

Sec. B-8. 16 MRSA §614, sub-§3, ¶E, as enacted by PL 2009, c. 181, §3, is amended to read:

E. An advocate, as defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice agency and subject to reasonable limitations to protect the interests described in subsection 1. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:

- (1) Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;
- (2) Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;
- (3) Require the advocate to ensure that reports or records that contain intelligence and investigative information remain secure and confidential;
- (4) Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;
- (5) Permit the criminal justice agency to perform reasonable and appropriate audits in order to ensure that records containing intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this paragraph;
- (6) Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;
- (7) Permit the criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this paragraph; and
- (8) Provide sanctions for any violations of this paragraph.

The Commissioner of Public Safety may adopt a model policy to standardize the provisions contemplated in this paragraph; ~~or~~ or

Sec. B-9. 16 MRSA §614, sub-§3, ¶F is enacted to read:

F. The Secretary of State for use in the determination and issuance of a driver's license suspension.

Sec. B-10. 16 MRSA §632, as enacted by PL 1993, c. 346, §1, is amended to read:

§632. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Administration of criminal justice. "Administration of criminal justice" has the same meaning as defined in section ~~611~~ 703, subsection 1.

~~**2. Conviction data.** "Conviction data" has the same meaning as defined in section 611, subsection 2.~~

2-A. Confidential criminal history record information. "Confidential criminal history record information" has the same meaning as defined in section 703, subsection 2.

3. Criminal history record information. "Criminal history record information" has the same meaning as defined in section ~~611~~ 703, subsection 3.

4. Criminal justice agency. "Criminal justice agency" has the same meaning as defined in section ~~611~~ 703, subsection 4.

5. Criminal record information system. "Criminal record information system" means a system including equipment, facilities, procedures and agreements for the collection, processing, preservation and dissemination of criminal record information including criminal history record information.

6. Disposition. "Disposition" has the same meaning as defined in section ~~611~~ 703, subsection 5.

7. Executive order. "Executive order" has the same meaning as defined in section ~~611~~ 703, subsection 7.

~~**8. Nonconviction data.** "Nonconviction data" has the same meaning as defined in section 611, subsection 9.~~

9. Offender. "Offender" means an individual, juvenile or adult, accused or convicted of a criminal offense under the laws of this State or federal law.

10. Offender-based tracking information. "Offender-based tracking information" means information collected during the administration of criminal justice by criminal justice agencies related to an identifiable person who has been determined to be an offender.

~~**11. Person.** "Person" has the same meaning as defined in section 611, subsection 10.~~

11-A. Public criminal history record information. "Public criminal history record information" has the same meaning as defined in section 703, subsection 8.

12. State. "State" has the same meaning as defined in section ~~611~~ 703, subsection ~~11~~ 9.

13. Statute. "Statute" has the same meaning as defined in section ~~611~~ 703, subsection ~~12~~ 10.

Sec. B-11. 17 MRSA §1023, sub-§3, as enacted by PL 2001, c. 422, §13, is amended to read:

3. Cooperation between agencies. For the purposes of this section, law enforcement officers, the commissioner or the commissioner's designee, humane agents, a state veterinarian and certified animal control officers may exchange information and reports pertaining to an investigation of cruelty to animals pursuant to ~~Title 16, chapter 3, subchapter VIII~~ subsection 4 and Title 7, section 3909, subsection 6.

Sec. B-12. 18-A MRSA §9-304, sub-§(a-1), ¶(2), as corrected by RR 2001, c. 1, §21, is amended to read:

(2). The court shall request a background check for each prospective adoptive parent who is not the biological parent of the child. The background check must include a screening for child abuse cases in the records of the department and criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.

(i) The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of ~~Maine conviction data~~ public criminal history record information as defined in Title 16, section 703, subsection 8.

(ii) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.

(iii) Each prospective parent who is not the biological parent of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the court for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

(iv) The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section ~~620~~ 709.

(v) State and federal criminal history record information may be used by the court for the purpose of screening prospective adoptive parents in determining whether the adoption is in the best interests of the child.

(vi) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the court are for official use only and may not be disseminated outside the court except as required under Title 22, section 4011-A.

(vii) The expense of obtaining the information required by this paragraph is incorporated in the adoption filing fee established in section 9-301. The Probate Court shall collect the total fee and transfer the appropriate funds to the Department of Public Safety and the department.

Sec. B-13. 18-A MRS §9-304, sub-§(a-2), ¶(1), as enacted by PL 2003, c. 575, §2, is amended to read:

(1). The department may request a background check for each prospective adoptive parent who is not the biological parent of the child. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.

(i) The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8.

(ii) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.

(iii) Each prospective parent who is not the biological parent of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the department for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

(iv) The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section ~~620~~ 709.

(v) State and federal criminal history record information may be used by the department for the purpose of screening prospective adoptive parents in determining whether the adoption is in the best interests of the child.

(vi) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the department are for official use only and may not be disseminated outside the department except to a court considering an adoption petition under subsection (a-1).

Sec. B-14. 20-A MRSA §6103, sub-§1, as amended by PL 1997, c. 452, §3, is further amended to read:

1. Criminal history record information obtained; reliance. The commissioner shall obtain criminal history record information containing a record of ~~conviction data~~ confidential criminal history record information as defined in Title 16, section 703, subsection 2 from the Maine Criminal Justice Information System for any person applying for certification, authorization, approval or renewal. The commissioner may rely on information provided by the Maine Criminal Justice Information System within 24 months prior to the issuance of a certificate, authorization, approval or renewal.

Sec. B-15. 20-A MRSA §6103, sub-§8, as enacted by PL 1997, c. 452, §3, is amended to read:

8. Applicant's access to criminal history record check. The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of a criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal record check may inspect and review criminal record information pursuant to Title 16, section ~~620~~ 709.

Sec. B-16. 22 MRSA §3022, sub-§14, as enacted by PL 2001, c. 221, §5, is amended to read:

14. Access to report documents. Report documents, as defined in section 3035, subsection 2, in the possession or custody of a medical examiner or the Office of the Chief Medical Examiner constitute investigative information. Release and inspection are governed by Title 16, section ~~614~~ 804. Release and inspection are also contingent upon the person's request specifying a specific decedent or decedents and the payment of any required fee under section 3035.

Sec. B-17. 22 MRSA §3480, sub-§1, ¶B, as corrected by RR 2009, c. 2, §56, is amended to read:

B. Obtain ~~nonconviction data~~ confidential criminal history record information and other criminal history record information under Title 16, section ~~611~~ 703, which the commissioner, the commissioner's delegate or the legal counsel for the department ~~deems~~ considers relevant to a case of alleged abuse, neglect or exploitation.

Sec. B-18. 22 MRSA §4007, sub-§1-A, ¶D, as enacted by PL 2007, c. 351, §2, is amended to read:

D. Records that are required to be maintained by the court as confidential under this subsection may be disclosed to:

- (1) A state agency if necessary to carry out the statutory function of that agency;
- (2) A guardian ad litem appointed to the case; or
- (3) A criminal justice agency, as defined by Title 16, section ~~611~~ 703, subsection 4, if necessary to carry out the administration of criminal justice or the administration of juvenile justice, and such disclosure is otherwise permitted pursuant to section 4008.

In making such disclosure, the court shall order the party receiving the information to maintain the information as confidential.

Sec. B-19. 22 MRSA §4021, sub-§1, ¶B, as amended by PL 2007, c. 586, §15, is further amended to read:

B. Obtain ~~nonconviction data~~ confidential criminal history record information and other criminal history record information under Title 16, chapter ~~3, subchapter 8~~ 7 that the commissioner, the commissioner's delegate or the legal counsel for the department considers relevant to an abuse or neglect case or the investigation of a suspicious child death.

Sec. B-20. 22 MRSA §4038-E, sub-§7, ¶A, as enacted by PL 2011, c. 402, §15, is amended to read:

A. The department may, pursuant to rules adopted pursuant to Title 18-A, section 9-304, subsection (a-2), request a background check for each permanency guardian. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.

- (1) The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of ~~Maine conviction data~~ public criminal history record information as defined in Title 16, section 703, subsection 8.
- (2) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.
- (3) Each permanency guardian of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the department for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

(4) The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section ~~620~~ 709.

(5) State and federal criminal history record information may be used by the department for the purpose of screening each permanency guardian in determining whether the adoption is in the best interests of the child.

(6) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the department are for official use only and may not be disseminated outside the department except to a court considering an adoption petition under this section.

Sec. B-21. 25 MRSA §1541, sub-§3, ¶B, as enacted by PL 2001, c. 372, §1, is amended to read:

B. Notwithstanding chapter 199, the fingerprints and descriptive information of any person that have been submitted to the Federal Bureau of Investigation for the purpose of conducting a criminal history record check for noncriminal justice purposes through the interstate identification index system, as defined in section 1703, subsection 12, are not a criminal history record, as defined by section 1703, subsection 5, or criminal history record information, as defined by Title 16, section ~~611~~ 703, subsection 3, and such submittal is not an activity related to criminal justice, as defined by section 1703, subsection 6, or the administration of criminal justice, as defined by Title 16, section ~~611~~ 703, subsection 1.

Sec. B-22. 25 MRSA §1541, sub-§6, as amended by PL 2007, c. 539, Pt. PPP, §1, is further amended to read:

6. Establishment of fees. The State Bureau of Identification may charge a fee to individuals, nongovernmental organizations, governmental organizations that are engaged in licensing and governmental organizations that are not a governmental entity of the State, a county of the State or a municipality of the State for each criminal history record check requested for noncriminal justice purposes pursuant to Title 16, chapter ~~3~~, ~~subchapter 8~~ 7. The requestor shall provide a name and date of birth for each record being requested. A request made pursuant to 5 United States Code, Section 9101 must be accompanied by fingerprints. A governmental organization that is engaged in licensing may charge an applicant for the cost of the criminal history record check. The commissioner shall establish a schedule of fees that covers the cost of providing these services. One dollar of each fee generated under this subsection must be deposited to the Other Special Revenue account within the Bureau of State Police to offset the cost of maintenance and replacement of both hardware and software associated with the criminal history record check system. The remaining revenues generated from these fees must be credited to the General Fund.

Sec. B-23. 29-A MRSA §2117-A, sub-§5, as enacted by PL 2009, c. 605, §1, is amended to read:

5. Data retention. Data collected or retained through the use of an automated license plate recognition system in accordance with subsection 3 that are not considered intelligence and investigative record information as defined by Title 16, section ~~611~~ 803, subsection 8 7, or data collected for the purposes of commercial motor vehicle screening, may not be stored for more than 21 days.

Sec. B-24. 29-A MRSA §2251, sub-§7-A, ¶B, as amended by PL 2011, c. 654, §8, is further amended to read:

B. Except as provided in paragraph B-1 and Title 16, section 805, subsection 6, the Department of Public Safety, Bureau of State Police may not publicly disseminate personally identifying accident report data that are contained in an accident report database maintained, administered or contributed to by the Bureau of State Police. Such data are not public records for the purposes of Title 1, chapter 13.

Sec. B-25. 32 MRSA §85, sub-§3, as amended by PL 2011, c. 271, §8, is further amended to read:

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

A. The person must have completed successfully the training specified in rules adopted by the board pursuant to the Maine Administrative Procedure Act.

C. The person must have successfully completed a state cognitive test for basic emergency medical treatment and a board-approved practical evaluation of emergency medical treatment skills.

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

Sec. B-26. 34-A MRSA §1001, sub-§§19 and 20, as enacted by PL 1987, c. 633, §1, are amended to read:

19. Administration of criminal justice. "Administration of criminal justice" has the same meaning as in Title 16, section ~~611~~ 703, subsection 1.

20. Criminal justice agency. "Criminal justice agency" has the same meaning as in Title 16, section ~~611~~ 703, subsection 4.

Sec. B-27. 34-A MRSA §1216, sub-§1, as amended by PL 2011, c. 515, §2 and c. 662, §22, is repealed and the following enacted in its place:

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

A. To any person if the person receiving services, that person's legal guardian, if any, and, if that person is a minor, that person's parent or legal guardian give informed written consent to the disclosure of the documents referred to in this subsection after being given the opportunity to review the documents sought to be disclosed;

B. To any state agency if necessary to carry out the statutory functions of that agency;

C. If ordered by a court of record, subject to any limitation in the Maine Rules of Evidence, Rule 503;

D. To any criminal justice agency if necessary to carry out the administration of criminal justice or the administration of juvenile criminal justice or for criminal justice agency employment;

E. To persons engaged in research if:

(1) The research plan is first submitted to and approved by the commissioner;

(2) The disclosure is approved by the commissioner; and

(3) Neither original records nor identifying data are removed from the facility or office that prepared the records.

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

F. To persons who directly supervise or report on the health, behavior or progress of a juvenile, to the superintendent of a juvenile's school and the superintendent's designees and to agencies that are or might become responsible for the health or welfare of a juvenile if the information is relevant to and disseminated for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation, including reintegration into the school; or

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

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

(2) The disclosure is approved by the commissioner.

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

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

Sec. B-28. 34-A MRSA §11221, sub-§8, as enacted by PL 2003, c. 371, §7, is amended to read:

8. Criminal justice agency access to information. The bureau shall provide access to the information described in subsection 1 to criminal justice agencies. For purposes of this subsection, "criminal justice agency" has the same meaning as in Title 16, section ~~611~~ 703, subsection 4.

Sec. B-29. 34-A MRSA §11221, sub-§10, as amended by PL 2011, c. 299, §2, is further amended to read:

10. Registrant access to information. The bureau shall provide all information described in subsection 1, paragraphs A to F to a registrant who requests that person's own information. The process for access and review of that information is governed by Title 16, section ~~620~~ 709.

Sec. B-30. 34-A MRSA §11281, sub-§6, as enacted by PL 2011, c. 663, §3, is amended to read:

6. Criminal justice agency access to information. The bureau shall provide access to the information described in subsection 1 to criminal justice agencies. For purposes of this subsection, "criminal justice agency" has the same meaning as in Title 16, section ~~611~~ 703, subsection 4.

PART C

Sec. C-1. 7 MRSA §3909, sub-§6 is enacted to read:

6. Confidential information. The names of and other identifying information about persons providing information pertaining to criminal or civil cruelty to animals to the department are confidential information and may not be released.

Sec. C-2. 17 MRSA §1023, sub-§4 is enacted to read:

4. Confidential information. The names of and other identifying information about persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Conservation and Forestry are confidential information and may not be released.

PART D

Sec. D-1. 15 MRSA §3308-A is enacted to read:

§3308-A. Dissemination of juvenile intelligence and investigative record information by a Maine criminal justice agency

The following provisions apply to the dissemination of juvenile intelligence and investigative record information collected by or at the direction of or kept in the custody of any Maine criminal justice agency.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Administration of juvenile justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known, suspected or possible juvenile crimes. "Administration of juvenile justice" includes the collection, storage and dissemination of juvenile intelligence and investigative record information relating to the administration of juvenile justice.

B. "Criminal justice agency" has the same meaning as in Title 16, section 803, subsection 4.

C. "Dissemination" has the same meaning as in Title 16, section 803, subsection 5.

D. "Executive order" has the same meaning as in Title 16, section 803, subsection 6.

E. "Juvenile intelligence and investigative record information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency or kept in the custody of a criminal justice agency while performing the administration of juvenile justice. "Juvenile intelligence and investigative record information" includes information of record concerning investigative techniques and procedures and security plans and procedures prepared or collected by a criminal justice agency or another agency. "Juvenile intelligence and investigative record information" does not include criminal history record information as defined in Title 16, section 703, subsection 3 or intelligence and investigative record information as defined in Title 16, section 803, subsection 7.

F. "State" has the same meaning as in Title 16, section 803, subsection 8.

G. "Statute" has the same meaning as in Title 16, section 803, subsection 9.

2. Information part of proceeding. To the extent the juvenile intelligence and investigative record information has been made part of the court records of a juvenile proceeding, dissemination of that juvenile intelligence and investigative record

information by a Maine criminal justice agency must be as provided by section 3307 and section 3308.

3. Limited dissemination. Except as otherwise provided in subsection 2, juvenile intelligence and investigative record information is confidential and may be disseminated by a Maine criminal justice agency only to:

A. Another criminal justice agency;

B. A person or public or private entity as part of performing the administration of juvenile justice;

C. A juvenile accused of a juvenile crime or that juvenile's agent or attorney for adjudicatory or dispositional purposes if authorized by:

(1) The responsible prosecutorial office or prosecutor; or

(2) A court rule or court order of this State or of the United States.

As used in this paragraph, "agent" means a licensed professional investigator, an expert witness or the juvenile's parents, guardian or legal custodian;

D. A juvenile crime victim or that victim's agent or attorney if authorized by:

(1) Statute; or

(2) A court order.

As used in this paragraph, "agent" means a licensed professional investigator or an immediate family member if, due to death, age, physical or mental disease, disorder or intellectual disability or autism, the victim cannot realistically act on the victim's own behalf;

E. A federal court, the District Court, including when it is exercising the jurisdiction conferred by section 3101, the Superior Court or the Supreme Judicial Court and an equivalent court in another state; and

F. A person or public or private entity expressly authorized to receive the juvenile intelligence and investigative record information by statute, executive order, court rule, court decision or court order. "Express authorization" means language in the statute, executive order, court rule, court decision or court order that specifically speaks to intelligence or investigative record information or specifically refers to a type of intelligence or investigative record.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

—
H.P. 86 - L.D. 104

An Act To Amend the Laws Governing Public Records

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

Sec. 1. 1 MRSA §402, sub-§3, ¶Q, as amended by PL 2011, c. 149, §2, is further amended to read:

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

Sec. 2. 1 MRSA §402, sub-§3, ¶R, as enacted by PL 2011, c. 149, §3, is amended to read:

R. Social security numbers in the possession of the Secretary of State; ~~and~~

Sec. 3. 1 MRSA §402, sub-§3, ¶S is enacted to read:

S. E-mail addresses obtained by a political subdivision of the State for the sole purpose of disseminating noninteractive notifications, updates and cancellations that are issued from the political subdivision or its elected officers to an individual or individuals that request or regularly accept these noninteractive communications.

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND THIRTEEN

H.P. 861 - L.D. 1216

An Act To Amend the Freedom of Access Act

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

Sec. 1. 1 MRSA §408-A, sub-§3, as enacted by PL 2011, c. 662, §5, is amended to read:

3. Acknowledgment; clarification; time estimate; cost estimate. The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within ~~a reasonable period of time~~, 5 working days of receiving the request and may request clarification concerning which public record or public records are being requested. ~~The~~ Within a reasonable time of receiving the request, the agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request, as well as a cost estimate as provided in subsection 9. The agency or official shall make a good faith effort to fully respond to the request within the estimated time.

Sec. 2. 1 MRSA §408-A, sub-§4, as enacted by PL 2011, c. 662, §5, is amended to read:

4. Refusals; denials. If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide written notice of the denial, stating the reason for the denial, within 5 working days of the receipt of the request for inspection or copying. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

Sec. 3. 1 MRSA §409, sub-§1, as amended by PL 2011, c. 559, Pt. A, §1 and c. 662, §6, is repealed and the following enacted in its place:

1. Records. Any person aggrieved by a refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record under section 408-A may appeal the refusal, denial or failure within 30 calendar days of the receipt of the written notice of refusal, denial or failure to any Superior Court within the State as a trial de

novo. The agency or official shall file an answer within 14 calendar days. If a court, after a trial de novo, determines such refusal, denial or failure was not for just and proper cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

STATE OF MAINE

 IN THE YEAR OF OUR LORD

TWO THOUSAND AND THIRTEEN

 S.P. 566 - L.D. 1511
An Act Regarding Coordinated Access to Public Records of State Agencies**Be it enacted by the People of the State of Maine as follows:**

Sec. 1. 5 MRSA §200-I, sub-§2, ¶¶D and E, as enacted by PL 2007, c. 603, §1, are amended to read:

D. Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor and the parties involved; ~~and~~

E. Make recommendations concerning ways to improve public access to public records and proceedings; and

Sec. 2. 5 MRSA §200-I, sub-§2, ¶F is enacted to read:

F. Coordinate with the state agency public access officers the compilation of data through the development of a uniform log to facilitate record keeping and annual reporting of the number of requests for information, the average response time and the costs of processing requests.

Sec. 3. Development of centralized methods for public record requests; report. The Department of the Attorney General, with input from the Department of Administrative and Financial Services, Office of Information Technology and state agency public access officers as defined in the Maine Revised Statutes, Title 1, section 402, subsection 5, shall:

1. Review the current system used by state agencies for receiving and responding to requests for public records in accordance with Title 1, chapter 13, subchapter 1; and

2. Review the feasibility of developing a centralized system for coordinating the receipt of and response to requests to state agencies for public records in accordance with Title 1, chapter 13, subchapter 1.

A centralized system developed by the Department of the Attorney General must include a single website address, a single e-mail address and a directory for the public to use to make requests for public records of all state agencies. By January 5, 2014, the Department of the Attorney General shall submit to the Joint Standing Committee on Judiciary a report relating to the reviews under this section, including findings and recommendations and suggested statutory changes needed to implement the recommendations. The Joint Standing Committee on Judiciary may report out a bill relating to the subject matter of the report to the Second Regular Session of the 126th Legislature.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

—
H.P. 250 - L.D. 345

**An Act To Ensure the Confidentiality of Concealed Handgun Permit Holder
Personal Information**

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the lists of all holders of concealed handgun permits in the State, which include personal information of the permit holders such as name, full current address and often date of birth, will revert to being public on April 30, 2013; and

Whereas, the public dissemination of personal information of concealed handgun permit holders may subject a holder to possible identity theft and may put the holder's and the holder's family's well-being at risk; and

Whereas, public access to information about concealed handgun permits that does not include information that personally identifies permit holders is consistent with the underlying principles of the Freedom of Access Act relating to understanding and monitoring how the government carries out its responsibilities; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 25 MRSA §2006, as amended by PL 2011, c. 662, §15, is repealed and the following enacted in its place:

A.D.1

§2006. Access to information and proceedings

1. Application, refusals and collected information; proceedings. All applications for a permit to carry concealed handguns and documents made a part of the application, refusals and any information of record collected by the issuing authority during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 2003 and 2005 are confidential and are not public records for the purposes of Title 1, chapter 13, subchapter 1. The applicant may waive this confidentiality by written notice to the issuing authority. All proceedings relating to the issuance, refusal, suspension or revocation of a permit to carry concealed handguns are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant.

2. Permanent record of permit. The issuing authority shall make a permanent record of each permit to carry concealed handguns in a suitable book or file kept for that purpose. The record must include the information contained in the permit itself. The record is confidential except that the following information about each permit holder is not confidential and is a public record:

- A. The municipality of residence;
- B. The date the permit was issued; and
- C. The date the permit expires.

This subsection does not limit disclosure of confidential information for criminal justice purposes or permitting purposes to law enforcement officers and issuing authorities.

Sec. 2. Statistical information; plan; report. In order to provide meaningful statistical information about concealed handgun permits in this State, the Chief of the State Police shall prepare a plan that meets the requirements of this section. The Chief of the State Police shall submit a report to the Joint Standing Committee on Criminal Justice and Public Safety no later than January 15, 2014 that contains the plan along with any proposed implementing legislation. The Joint Standing Committee on Criminal Justice and Public Safety may report out legislation to the Second Regular Session of the 126th Legislature upon receipt of the report. The plan must include the following elements.

1. Statistical information. The plan must propose a process that results in the availability of statistical information about concealed handgun permits in this State. The information must include at a minimum the following data:

- A. About the permitting process:
 - (1) The number of permit applications;
 - (2) The number of permits issued;
 - (3) The number of applications refused or denied; and
 - (4) The number of suspensions and revocations; and
- B. About applicants and permit holders:
 - (1) Gender;

- (2) Age, in 5-year or 10-year ranges; and
- (3) Municipality or zip code of residence.

The proposal may include any additional data that may be useful in the analysis of concealed handgun permits and the issuing process, as long as personally identifying information about applicants or permit holders is not disclosed as a public record. The plan must include appropriate reporting periods.

2. Permit. The Chief of the State Police shall review the form of the permits used by issuing authorities and determine if a single model permit form would be desirable. The plan may include a model permit, which may include the integration of a photograph. The plan may recommend the use of a model permit as either advisory or mandatory for all issuing authorities.

3. Statewide information. The plan must include a process for identifying and collecting information from all issuing authorities to provide complete statewide statistical information as required in subsection 1. The Chief of the State Police shall invite issuing authorities to provide suggestions and comments. The plan may eliminate the responsibility of municipal issuing authorities to make information available to the public if the identical information is available from a central state source. The plan must provide for the public availability of statistical information and must provide for an annual report of statewide statistical information.

4. Additional information and recommendations. The Chief of the State Police may include in the report any additional information or recommendations that the chief determines may be useful to the Legislature in addressing issues concerning concealed handgun permits.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect April 30, 2013.

APPROVED

February 19, 2013

BY GOVERNOR

CHAPTER

1

RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND THIRTEEN

S.P. 214 - L.D. 576

**Resolve, To Protect Concealed Handgun Permit Information on a
Temporary Basis**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the list of all holders of concealed handgun permits in the State is public, which includes personal information of the permit holders such as name, full current address and date of birth; and

Whereas, this resolve places a temporary moratorium on public access to such permanent records pending the Legislature's consideration of the issue; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Moratorium on access. Resolved: That, notwithstanding the Maine Revised Statutes, Title 25, section 2006, until April 30, 2013, a permanent record that is created by an issuing authority of a concealed handgun permit is confidential and may not be made available for public inspection or copying. Notwithstanding any provision of law to the contrary, this section applies to requests for information under the Freedom of Access Act that are pending on the effective date of this resolve. Notwithstanding this section, confidential information may be disclosed to law enforcement officers and issuing authorities for criminal justice and permitting purposes. After April 30, 2013, an application for a permit filed or granted on or after the effective date of this resolve and on or before April 30, 2013 will be governed by the law in effect on and after April 30, 2013; and be it further

Sec. 2. Repeal. Resolved: That this resolve is repealed on April 30, 2013.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

APPROVED

JUNE 18, 2013

BY GOVERNOR

CHAPTER

283

PUBLIC LAW

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

—
H.P. 438 - L.D. 619

**An Act To Prohibit the Sharing of Certain Personal Information by the
Department of the Secretary of State**

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

Sec. 1. 29-A MRSA §251, sub-§4 is enacted to read:

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

APPROVED

JUNE 10, 2013

BY GOVERNOR

CHAPTER

222

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND THIRTEEN

H.P. 687 - L.D. 973

**An Act To Make Veterans' Property Tax Exemption Applications
Confidential**

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation needs to take effect before the expiration of the 90-day period so that its provisions are in place to protect veterans as soon as possible; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 36 MRSA §653, sub-§1, ¶G, as amended by PL 1989, c. 501, Pt. Z, is further amended to read:

G. Any person who desires to secure exemption under this subsection shall make written application and file written proof of entitlement on or before the first day of April, in the year in which the exemption is first requested, with the assessors of the place in which the person resides. Notwithstanding Title 1, chapter 13, an application and proof of entitlement filed pursuant to this paragraph is confidential and may not be made available for public inspection. The assessors shall thereafter grant the exemption to any person who is so qualified and remains a resident of that place or until they are notified of reason or desire for discontinuance.

PL C. 222 p. 2

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

4.0.7

ONTP



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 19

S.P. 11

In Senate, January 15, 2013

An Act To Facilitate Access to Information by Legislators

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'Darek M. Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator CRAVEN of Androscoggin.

Cosponsored by Senators: LACHOWICZ of Kennebec, TUTTLE of York, Representatives:
CAREY of Lewiston, GOODE of Bangor.

4.8.8

ONTP



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 135

H.P. 110

House of Representatives, January 29, 2013

An Act To Require All Government Documents To Be Posted on the Internet

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BROOKS of Winterport.
Cosponsored by Senator GRATWICK of Penobscot and
Representatives: EVANGELOS of Friendship, FARNSWORTH of Portland, JONES of
Freedom, MORRISON of South Portland, SCHNECK of Bangor, STANLEY of Medway,
WINCHENBACH of Waldoboro.

4.D.10

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

2 **Sec. 1. 1 MRSA §541, sub-§3** is enacted to read:

3 **3. Public record.** "Public record" has the same meaning as in section 402,
4 subsections 3, 3-A and 4.

5 **Sec. 2. 1 MRSA §543** is enacted to read:

6 **§543. Public records electronically available**

7 A public entity shall make all public records in the public entity's possession
8 available for viewing on a publicly accessible site on the Internet.

9 **Sec. 3. Maine Revised Statutes headnote amended; revision clause.** In the
10 Maine Revised Statutes, Title 1, chapter 14-A, in the chapter headnote, the words "notice
11 of information practices" are amended to read "information practices" and the Revisor of
12 Statutes shall implement this revision when updating, publishing or republishing the
13 statutes.

14 **SUMMARY**

15 This bill amends the laws concerning the information practices of public entities.
16 Current law defines "public entity" to include the Legislature; the Judicial Department; a
17 state agency or authority; the University of Maine System, the Maine Maritime Academy
18 and the Maine Community College System; a county, municipality or school district or
19 any regional or other political or administrative subdivision; and an advisory organization
20 established, authorized or organized by law or resolve or by executive order issued by the
21 Governor. This bill requires a public entity to make available on a publicly accessible
22 site on the Internet all public records in the possession of the public entity.

DNTP



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 495

S.P. 188

In Senate, February 19, 2013

An Act Regarding the Law Pertaining to the Confidentiality of Enhanced 9-1-1 System Information and Records

Submitted by the Department of Public Safety pursuant to Joint Rule 204.
Reference to the Committee on Energy, Utilities and Technology suggested and ordered
printed.

A handwritten signature in black ink, appearing to read 'Darek M. Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BURNS of Washington.
Cosponsored by Senator: VALENTINO of York.

A.D.12

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

2 **Sec. 1. 25 MRSA §2921, sub-§4-A** is enacted to read:

3 **4-A. Emergency dispatch center.** "Emergency dispatch center" means a center that
4 dispatches emergency services in response to enhanced 9-1-1 requests for emergency
5 services.

6 **Sec. 2. 25 MRSA §2929**, as amended by PL 2011, c. 623, Pt. D, §1 and c. 662,
7 §16, is further amended to read:

8 **§2929. Confidentiality of system information and records**

9 **1. Definition.** As used in this section, "confidential information" means the
10 following information as contained in any database, report, audio recording or other such
11 record of the bureau or a public safety answering point or an emergency dispatch center
12 or as contained in any such record when in the custody of a criminal justice agency, as
13 defined in Title 16, section 611, subsection 4:

14 A. The names, addresses and telephone numbers of persons listed in E-9-1-1
15 databases;

16 B. ~~Names, addresses and telephone numbers that are~~ Customer information, as
17 described in Title 35-A, section 7501-B, that is omitted from a telephone utility
18 directory list at the request of a customer;

19 C. The name, address and telephone number of a caller to a public safety answering
20 point or emergency dispatch center; or

21 D. The name, address and telephone number of and any medical information about a
22 person receiving emergency services through the E-9-1-1 system.

23 **2. Confidentiality.** Confidential information may not be utilized for commercial
24 purposes and may not be disclosed in any manner except as follows:

25 A. A public safety answering point or an emergency dispatch center may disclose
26 confidential information to public or private safety agencies and emergency
27 responders for purposes of processing emergency calls and providing emergency
28 services;

29 B. A public safety answering point or an emergency dispatch center may disclose
30 confidential information to a ~~law enforcement officer or law enforcement~~ criminal
31 justice agency for the purpose of criminal investigations or criminal prosecutions
32 related to an E-9-1-1 call;

33 C. A public safety answering point or an emergency dispatch center may disclose
34 confidential information to designees of the bureau director for the purpose of system
35 maintenance and quality control; and

36 D. The bureau director may disclose confidential information to public safety
37 answering points, emergency dispatch centers, public or private safety agencies,

1 emergency responders or others within the E-9-1-1 system to the extent necessary to
2 implement and manage the E-9-1-1 system.

3 Confidential information that is required to be disclosed to providers of emergency
4 services and providers of emergency support services pursuant to 47 United States Code,
5 Section 222(g) remains subject to the confidentiality provisions of this section, and a
6 provider of emergency services and emergency support services that acquires such
7 confidential information pursuant to that provision of federal law may use the information
8 solely for the purposes of delivering or assisting in the delivery of emergency notification
9 services as defined in 47 United States Code, Section 222(h)(6). System databases,
10 including, but not limited to, those disclosed pursuant to 47 United States Code, Section
11 222(g), remain the property of the bureau pursuant to section 2926, subsection 6. The
12 name, address and telephone number of any person to whom any outgoing emergency
13 notification call is made using confidential information acquired pursuant to 47 United
14 States Code, Section 222(g) are confidential and may not be disclosed except as provided
15 in this section.

16 **3. Disclosure required.** The restrictions on disclosure provided under subsection 2
17 apply only to those portions of databases, reports, audio recordings or other such records
18 of the bureau or a public safety answering point or an emergency dispatch center that
19 contain confidential information. Other information that appears in those records and
20 other records, except information or records declared to be confidential under other law,
21 is subject to disclosure pursuant to Title 1, section 408-A. For the purposes of this
22 subsection, "information or records declared to be confidential under other law" includes,
23 but is not limited to, information or records that relate to a pending law enforcement
24 investigation or a pending criminal prosecution. Public access to such information or
25 records is governed by Title 15, Part 6 in the case of a pending investigation or
26 adjudication of a juvenile crime or by Title 16, section 614. The bureau shall develop
27 procedures to ensure protection of confidential records and information and public access
28 to other records and information. Procedures may involve developing edited copies of
29 records containing confidential information or the production of official summaries of
30 those records that contain the substance of all nonconfidential information.

31 **4. Audio recordings of E-9-1-1 calls; confidential.** Audio recordings of emergency
32 calls made to the E-9-1-1 system are confidential and may not be disclosed except as
33 provided in this subsection. Except as provided in subsection 2, information contained in
34 the audio recordings is public information and must be disclosed in transcript form in
35 accordance with subsection 3. The cost of preparing and disclosing information
36 contained in the audio recordings in transcript form is not subject to the limitation on
37 costs under Title 1, section 408-A, subsection 8. Subject to all the requirements of
38 subsection 2, the bureau or a public safety answering point or an emergency dispatch
39 center may disclose audio recordings of emergency calls made to the E-9-1-1 system in
40 the following circumstances:

- 41 A. To persons within the E-9-1-1 system to the extent necessary to implement and
42 manage the E-9-1-1 system;
- 43 B. To a ~~law enforcement officer or law enforcement~~ criminal justice agency, as
44 defined in Title 16, section 611, subsection 4, for the purpose of criminal
45 investigations or criminal prosecutions related to an E-9-1-1 call;

- 1 C. To designees of the bureau director for the purpose of system maintenance and
2 quality control; and
- 3 D. In accordance with an order issued on a finding of good cause by a court of
4 competent jurisdiction; and
- 5 E. To agencies or persons contracted by the bureau, a public safety answering point,
6 an emergency dispatch center or a criminal justice agency to prepare transcripts of
7 E-9-1-1 call audio recordings pursuant to this subsection.

8 Audio recordings disclosed pursuant to this subsection may not be further disclosed by
9 the agency or person receiving those recordings.

10 **5. Unlisted telephone numbers.** The name and address associated with the number
11 of a telephone company customer with an unlisted telephone number may be furnished to
12 the E-9-1-1 system for processing a request for E-9-1-1 services from that number and for
13 the provision of emergency services resulting from the request.

14 ~~**6. Penalty for disseminating information.** Knowingly disclosing confidential~~
15 ~~information in violation of subsection 2 or knowingly disclosing audio recordings of~~
16 ~~emergency calls to the E-9-1-1 system in violation of subsection 4 is a Class E crime.~~

17 **7. Penalty for disclosing or further disclosing information or records.** A person
18 may not intentionally:

- 19 A. Disclose confidential information in violation of subsection 2;
- 20 B. Disclose information or records in violation of subsection 3 if the person has
21 actual knowledge that the information or records are information or records declared
22 to be confidential under other law; or
- 23 C. Disclose or further disclose audio recordings of emergency calls to the E-9-1-1
24 system in violation of subsection 4.

25 A person who violates this subsection commits a Class E crime.

26 **SUMMARY**

27 This bill amends the law pertaining to the confidentiality of information and records
28 of the E-9-1-1 system. The bill:

- 29 1. Clarifies the types of agencies that are subject to the current law governing the
30 confidentiality of E-9-1-1 system information and records;
- 31 2. Defines the term "information or records declared to be confidential under other
32 law" by providing that the term includes, but is not limited to, information or records that
33 relate to a pending law enforcement investigation or a pending criminal prosecution;
- 34 3. Ensures that transcripts of E-9-1-1 call recordings may be accurately prepared;
- 35 4. Clarifies the types of disclosures of confidential information and records that are
36 prohibited under the law; and

4.15.15

- 1 5. Clarifies actions that constitute a violation of E-9-1-1 confidentiality requirements.

A.D.16

ONTP



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 684

H.P. 476

House of Representatives, February 26, 2013

An Act To Make Bylaws and Minutes of Board Meetings of Publicly Funded Hospitals Subject to the Freedom of Access Act

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative MacDONALD of Boothbay.
Cosponsored by Representatives: BROOKS of Winterport, FARNSWORTH of Portland,
PRIEST of Brunswick, RUSSELL of Portland, SANBORN of Gorham.

4.5.17

ONTP



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1118

H.P. 790

House of Representatives, March 21, 2013

**An Act To Amend Public Access Laws To Improve Accountability
for Public Funds by Making Public the Board Meetings of Hospitals
Receiving Significant State Funding**

(AFTER DEADLINE)

Submitted by the Department of the Attorney General pursuant to Joint Rule 205.
Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PRIEST of Brunswick.
Cosponsored by Senator SAVIELLO of Franklin and
Representatives: CROCKETT of Bethel, FARNSWORTH of Portland, GOODE of Bangor,
MacDONALD of Boothbay, Senators: President ALFOND of Cumberland, CRAVEN of
Androscoggin.

4.5.19

FOA Reviews ~ Judiciary Committee ~ 126th Legislature, First Regular Session
Final

LD	COMMITTEE	SUBJECT	MEMO DATE	REVIEW DATE	REPORT DATE	RESULT	STATUTE	RESULT
160	EDU	Archaeological sites	3/13/13	3/27/13	3/28/13	Recommended change	27 §377	PL 2013, c. 89
345	JUD	Concealed handgun permits	-	4/3/13	-	Majority: no change	25 §2006	PL 2013, c. 54
532	EDU	Public library patrons records	3/25/13	4/4/13	4/4/13	No changes	27 §121	PL 2013, c. 82
549	JUD	Limitation on release of first offense Class E theft criminal record	-	4/25/13	-	No changes	15 c. 310 (§2257)	Carryover (AFA Table)
619	JUD	Release of email addresses by Bureau of Motor Vehicles	-	5/29/13	-	No changes	29-A §251, sub-§4	PL 2013, c. 283
648	IFS	External review proceedings records	5/8/13	5/15/13	5/16/13	No changes	24-A §4312, sub-§7-A	PL 2013, c. 274
973	JUD	Veterans property tax applications	-	5/13/13	-	No changes	36 §653, sub-§1, ¶G	PL 2013, c. 222
982	JUD	Gambling offset for child support – shared information	-	5/1/13	-	No changes	8 §300-B, sub-§10	PL 2013, c. 255
1016	IFW	Hide dealer licensees records of buyers and sellers	5/16/13	5/23/13	5/23/13	Recommended change	12 §12954, sub-§4-A, ¶A	PL 2013, c. 333

42

FOA Reviews ~ Judiciary Committee ~ 126th Legislature, First Regular Session
Final

LD	COMMITTEE	SUBJECT	MEMO DATE	REVIEW DATE	REPORT DATE	RESULT	STATUTE	RESULT
1019	EDU	<ul style="list-style-type: none"> Draft research and materials of Maine State Museum Personal history research and materials 	5/3/13	5/9/13	5/14/13	No changes	<ul style="list-style-type: none"> 27 §86-B, sub-§1 27 §86-B, sub-§2 	PL 2013, c. 205
1308	ENR	Product stewardship program for architectural paint	5/15/13 6/5/13	5/23/13 6/10/13	Interim: 5/31/13 Final: 6/10/13	Interim: questions Final: No changes	38 §2144, sub-§5, ¶F	PL 2013, c. 395
1334	HHS	Records of Child Advocacy Centers	5/13/13	5/23/13 6/4/13	6/5/13	No changes	22 §4019, sub-§9	PL 2013, c. 364
1335	ENR	Product Stewardship programs - model	5/15/13 6/5/13	5/23/13 6/10/13	Interim: 5/31/13 Final: 6/10/13	Interim: questions Final: No changes	38 §1776, sub-§10	PL 2013, c. 315
1373	LCRED	Polygraph examiners records	6/7/13	6/11/13	6/12/13	Recommended changes	32 §7365	PL 2013, c. 316
1437	LCRED	Reporting about physicians to the licensing board	5/22/13	5/23/13	Tabled – no report	Public records exception not included		PL 2013, c. 355
1515	CJPS	Records concerning involuntary medication of person in custody of Dept of Corrections	5/30/13	6/4/13	6/5/13	No changes	34-A §3049, sub-§3, ¶G 34-A §3049, sub-§4	Carry over (AFA Table)

FOA Reviews ~ Judiciary Committee ~ 126th Legislature, First Regular Session

Final

LD	COMMITTEE	SUBJECT	MEMO DATE	REVIEW DATE	REPORT DATE	RESULT	STATUTE	RESULT
1519	IFS	Four provisions: <ul style="list-style-type: none"> • Records confidential from national organizations • Holding company information • Insurer's own risk and solvency assessment • Protected valuation information re insurance co. reservers 	5/21/13	5/23/13	5/28/13	No changes	<ul style="list-style-type: none"> • 24-A §216, sub-§5 • 24-A §222, sub-§13-A, ¶E • 24-A §423-F • 24-A §962 	PL c. 238

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Maine Revised Statute Title 22, Chapter 1684: SENTINEL EVENTS
REPORTING

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7.19.13

22 §8751. SENTINEL EVENT REPORTING

There is established under this chapter a system for reporting sentinel events for the purpose of improving the quality of health care and increasing patient safety. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

SECTION HISTORY

2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF).

22 §8752. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

1. Division. "Division" means the Department of Health and Human Services, Division of Licensing and Regulatory Services.

[2009, c. 358, §1 (AMD) .]

2. Health care facility. "Health care facility" or "facility" means a state institution as defined under Title 34-B, chapter 1 or a health care facility licensed by the division, except that it does not include a facility licensed as a nursing facility or licensed under chapter 1664. "Health care facility" includes a general and specialty hospital, an ambulatory surgical facility, an end-stage renal disease facility and an intermediate care facility for persons with intellectual disabilities or other developmental disabilities.

[2011, c. 542, Pt. A, §48 (AMD) .]

2-A. Immediate jeopardy. "Immediate jeopardy" means a situation in which the provider's noncompliance with one or more conditions of participation in the federal Medicare program has caused, or is likely to cause, serious injury, harm or impairment to or death of a patient.

[2009, c. 358, §1 (NEW) .]

3. Major permanent loss of function. "Major permanent loss of function" means sensory, motor, physiological or intellectual impairment that was not present at the time of admission and requires continued treatment or imposes persistent major restrictions in activities of daily living.

[2009, c. 358, §1 (AMD) .]

3-A. Near miss. "Near miss" means an event or situation that did not produce patient injury, but only because of chance, which may include, but is not limited to, robustness of the patient or a fortuitous, timely intervention.

[2009, c. 358, §1 (NEW) .]

3-B. Root cause analysis. "Root cause analysis" means a structured process for identifying the causal or contributing factors underlying adverse events. The root cause analysis follows a predefined protocol for identifying these specific factors in causal categories.

[2009, c. 358, §1 (NEW) .]

4. Sentinel event.

[2009, c. 358, §1 (RP) .]

4-A. Sentinel event. "Sentinel event" means:

A. An unanticipated death, or patient transfer to another health care facility, unrelated to the natural course of the patient's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility; [2009, c. 358, §1 (NEW).]

B. A major permanent loss of function unrelated to the natural course of the patient's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility that is present at the time of the discharge of the patient. If within 2 weeks of discharge from the facility, evidence is discovered that the major loss of function was not permanent, the health care facility is not required to submit a report pursuant to section 8753, subsection 2; [2009, c. 358, §1 (NEW).]

C. An unanticipated perinatal death or major permanent loss of function in an infant with a birth weight over 2,500 grams that is unrelated to the natural course of the infant's or mother's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility; and [2009, c. 358, §1 (NEW).]

D. Other serious and preventable events as identified by a nationally recognized quality forum and determined in rules adopted by the department pursuant to section 8756. [2009, c. 358, §1 (NEW).]

[2009, c. 358, §1 (NEW) .]

SECTION HISTORY

RR 2001, c. 2, §A37 (COR). RR 2001, c. 2, §A38 (AFF). 2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2007, c. 324, §17 (REV). 2009, c. 358, §1 (AMD). 2011, c. 542, Pt. A, §48 (AMD).

22 §8753. MANDATORY REPORTING OF SENTINEL EVENTS

A health care facility shall notify the division whenever a sentinel event has occurred, as provided in this chapter. [2009, c. 358, §2 (AMD).]

1. Notification. A health care facility shall notify the division of a sentinel event by the next business day after the event occurred or the next business day after the facility discovers that the event occurred. The notification must include the date and time of notification, the name of the health care facility and the type of sentinel event pursuant to section 8752, subsection 4-A.

[2009, c. 358, §2 (AMD) .]

2. Reporting. The health care facility shall file a written report no later than 45 days following the notification of the occurrence of a sentinel event pursuant to subsection 1. The written report must be signed by the chief executive officer of the facility and must contain the following information:

A. Facility name and address; [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

B. Name, title and phone number of the contact person for the facility; [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

C. The date and time of the sentinel event; [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

D. The type of sentinel event and a brief description of the sentinel event; and [2009, c. 358, §2 (AMD).]

E. [2009, c. 358, §2 (RP).]

F. [2009, c. 358, §2 (RP).]

G. [2009, c. 358, §2 (RP) .]

H. A thorough and credible root cause analysis. A root cause analysis is thorough and credible only in accordance with the following.

(1) A thorough root cause analysis must include: a determination of the human and other factors most directly associated with the sentinel event and the processes and systems related to its occurrence; an analysis of the underlying systems and processes to determine where redesign might reduce risk; an inquiry into all areas appropriate to the specific type of event; an identification of risk points and their potential contributions to the event; a determination of potential improvement in processes or systems that would tend to decrease the likelihood of such an event in the future or a determination, after analysis, that no such improvement opportunities exist; an action plan that identifies changes that can be implemented to reduce risks or formulates a rationale for not undertaking such changes; and, where improvement actions are planned, an identification of who is responsible for implementation, when the action will be implemented and how the effectiveness of the action will be evaluated.

(2) A credible root cause analysis must include participation by the leadership of the health care facility and by the individuals most closely involved in the processes and systems under review, is internally consistent without contradictions or unanswered questions, provides an explanation for all findings, including those identified as "not applicable" or "no problem," and includes the consideration of any relevant literature.

(3) The root cause analysis submitted to the division may exclude protected professional competence review information pursuant to the Maine Health Security Act. [2009, c. 358, §2 (NEW) .]

[2009, c. 358, §2 (AMD) .]

3. Cooperation. A health care facility that has filed a notification or a report of the occurrence of a sentinel event under this section shall cooperate with the division as necessary for the division to fulfill its duties under section 8754.

[2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

4. Immunity. A person who in good faith reports a near miss, a suspected sentinel event or a sentinel event or provides a root cause analysis pursuant to this chapter is immune from any civil or criminal liability for the act of reporting or participating in the review by the division. "Good faith" does not include instances when a false report is made and the person reporting knows the report is false. This subsection may not be construed to bar civil or criminal action regarding perjury or regarding the sentinel event that led to the report.

[2009, c. 358, §2 (AMD) .]

5. Near miss notification. A health care facility may notify the division of the occurrence of a near miss. Should a facility report a near miss, the notification must include the date and time of notification, the name of the health care facility and the type of event or situation pursuant to section 8752, subsection 4-A that is related to the near miss.

[2009, c. 358, §2 (NEW) .]

SECTION HISTORY

2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2009, c. 358, §2 (AMD).

22 §8753-A. STANDARDIZED PROCEDURE

A health care facility shall have a written standardized procedure for the identification of sentinel events. The division shall develop the standardized reporting and notification procedures by adoption of routine

technical rules under Title 5, chapter 375, subchapter 2-A. [2009, c. 358, §3 (NEW) .]

SECTION HISTORY

2009, c. 358, §3 (NEW) .

22 §8754. DIVISION DUTIES

The division has the following duties under this chapter. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

1. Initial review; other action. Upon receipt of a notification or report of a sentinel event, the division shall complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. Upon receipt of a notification or report of a suspected sentinel event the division shall determine whether the event constitutes a sentinel event and complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. The division may conduct on-site reviews of medical records and may retain the services of consultants when necessary to the division.

A. The division may conduct on-site visits to health care facilities to determine compliance with this chapter. [2009, c. 358, §4 (NEW) .]

B. Division personnel responsible for sentinel event oversight shall report to the division's licensing section only incidences of immediate jeopardy and each condition of participation in the federal Medicare program related to the immediate jeopardy for which the provider is out of compliance. [2009, c. 358, §4 (NEW) .]

[2009, c. 358, §4 (AMD) .]

2. Procedures. The division shall adopt procedures for the reporting, reviewing and handling of information regarding sentinel events. The procedures must provide for electronic submission of notifications and reports.

[2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

3. Confidentiality. Notifications and reports filed pursuant to this chapter and all information collected or developed as a result of the filing and proceedings pertaining to the filing, regardless of format, are confidential and privileged information.

A. Privileged and confidential information under this subsection is not:

- (1) Subject to public access under Title 1, chapter 13, except for data developed from the reports that do not identify or permit identification of the health care facility;
- (2) Subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity; or
- (3) Admissible as evidence in any civil, criminal, judicial or administrative proceeding. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

B. The transfer of any information to which this chapter applies by a health care facility to the division or to a national organization that accredits health care facilities may not be treated as a waiver of any privilege or protection established under this chapter or other laws of this State. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

C. The division shall take appropriate measures to protect the security of any information to which this chapter applies. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

D. This section may not be construed to limit other privileges that are available under federal law or other laws of this State that provide for greater peer review or confidentiality protections than the peer

review and confidentiality protections provided for in this subsection. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

E. For the purposes of this subsection, "privileged and confidential information" does not include:

- (1) Any final administrative action;
- (2) Information independently received pursuant to a 3rd-party complaint investigation conducted pursuant to department rules; or
- (3) Information designated as confidential under rules and laws of this State. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

This subsection does not affect the obligations of the department relating to federal law.

[2009, c. 358, §5 (AMD) .]

4. Report. The division shall submit an annual report by February 1st each year to the Legislature, health care facilities and the public that includes summary data of the number and types of sentinel events of the prior calendar year by type of health care facility, rates of change and other analyses and an outline of areas to be addressed for the upcoming year.

[2009, c. 358, §6 (AMD) .]

SECTION HISTORY

2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2009, c. 358, §§4-6 (AMD) .

22 §8755. COMPLIANCE

1. Oversight. The division shall place primary emphasis on ensuring effective corrective action by the facility.

[2009, c. 358, §7 (NEW) .]

2. Penalties. When the division determines that a health care facility failed to report a sentinel event pursuant to this chapter, the health care facility is subject to a penalty imposed in conformance with Title 5, chapter 375, subchapter 4 and payable to the State of not more than \$10,000 per violation. If the facility in good faith notified the division of a suspected sentinel event and the division later determines it is a sentinel event, the facility is not subject to a penalty for that event. Funds collected pursuant to this section must be deposited in a dedicated special revenue account to be used to support sentinel event reporting and education.

[2009, c. 358, §7 (NEW) .]

3. Administrative hearing and appeal. To contest the imposition of a penalty under this section, a health care facility must submit to the division a written request for an administrative hearing within 10 days of notice of imposition of a penalty pursuant to this section. Judicial appeal must be in accordance with Title 5, chapter 375, subchapter 7.

[2009, c. 358, §7 (NEW) .]

4. Injunction. Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of this chapter.

[2009, c. 358, §7 (NEW) .]

5. Enforcement. The Office of the Attorney General may file a complaint with the District Court seeking injunctive relief for violations of this chapter.

[2009, c. 358, §7 (NEW) .]

SECTION HISTORY

2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2009, c. 358, §7 (RPR).

22 §8756. RULEMAKING

The department shall adopt rules to implement this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

SECTION HISTORY

2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF).

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Excerpt from Jan 2013 Report

RTK
AC

proposes a new provision in Title 20-A which specifically protects the release of email addresses as well as other personal information about a parent that may be collected by a school.

The Subcommittee worked through each aspect of the draft but in the end was significantly divided on whether to recommend the entire draft legislation to the Advisory Committee. The members recognized that there were a number of issues still unresolved, and the extent of the problem is unclear. The Subcommittee agreed to postpone any action on the draft legislation and requested that the Public Access Ombudsman research the issue, collect information and report back to the Subcommittee next year.

Consider creating drafting templates for exceptions to the Freedom of Access Act access requirements

The Subcommittee developed draft templates for drafting specific confidentiality provisions concerning records provided by individuals and businesses to governmental agencies. Bill Norbert of the Finance Authority of Maine had provided suggested additions for clarification as to what information submitted by an applicant would be public.

The Subcommittee agreed to recommend to the Advisory Committee that the templates be used as guidance for drafting new statutes.

See discussion of Advisory Committee recommendations in Section VI.

Public Records Exceptions Subcommittee. The Public Records Exception Subcommittee's focus is to participate in the review and evaluation of public records exceptions, both existing and those proposed in new legislation; to examine inconsistencies in statutory language and to propose clarifying standard language. Shenna Bellows is the chair of the subcommittee and the following serve as members: Perry Antone, Percy Brown, AJ Higgins and Linda Pistner.

During 2012, the Public Records Exception Subcommittee held five meetings: July 16, August 8, September 13, November 8 and November 15.

→ Title 22, section 8754, reporting of sentinel events

The Subcommittee reviewed its previous work on the confidentiality of sentinel events reporting from 2011 and reviewed a copy of the most recent report submitted by the Department of Health and Human Services. Some members of the Subcommittee expressed support for repealing the confidentiality provisions completely, although it was acknowledged that it would cause a lot of concern and require a public hearing and thorough discussion involving many people. Other members agreed that a thorough process would be required, suggesting that either the full Advisory Committee or the Judiciary Committee of the Legislature could host that process.

Katherine Lybrand, the Advisory Committee's Law School Extern, presented to the Subcommittee a memo she had prepared describing other states' sentinel events reporting programs and the availability of information collected through those processes. Ms. Lybrand noted that a lot of states do include names of hospitals and information about the sentinel events

that were reported. Some state reports include comparisons among hospitals, as well as proposals or actions for improvement.

The Subcommittee received a written memorandum provided by the Maine Hospital Association, the Maine Medical Association, the Maine Osteopathic Association and the Medical Mutual Insurance Company of Maine that expressed their strong opposition to any changes in the confidentiality provision. In remarks to the Subcommittee, Jeff Austin of the Maine Hospital Association stressed that the quality of care in Maine is very high and that a great deal of information about quality of care that is already publicly available. Mr. Austin said that removing the confidentiality provision would have a significant chilling effect on the interest of hospitals to work with other groups on legislation, because the association would not be able to trust that compromises would hold. Mr. Austin said that robust sentinel event reporting is not necessarily an indication of poor care. Sentinel events reporting covers rare events; a better indicator of potential problems is the quality of routine care. Mr. Austin noted that the purpose of the reporting statute is not to inform the public but to improve care.

The Subcommittee also received comments from two quality care managers for local hospitals, who explained the importance of confidentiality in the sentinel event reporting process. They felt it has taken years to develop the "no blame" culture which allows everyone involved to be completely candid and allows the discovery of the causes of unexpected outcomes. Sometimes human errors are forced by system problems: was it a system error vs. a conscious deviation from the standard of care? Competence issues can be dealt with and are reported to hospital boards. The hospitals are transparent about quality indicators; information is readily available on two public websites: www.GetBetterMaine.org and www.HospitalCompare.hhs.gov. Both stressed that the quality data available on the websites are more specific and more useful than sentinel events reports.

A representative of the Department of Health and Human Services also told the Subcommittee that DHHS greatly values the confidentiality provided in current law. If an immediate risk exists, information is turned over to the licensing personnel who can take action quickly. It is also important to have follow up plans – need to know what to do, and who will do what when specific events do occur. The "no blame" philosophy underlying the current law is really important.

The Subcommittee members tentatively agreed that full disclosure of all information provided to DHHS through the sentinel events reporting program would most likely be counter-productive. The challenge is to find what information is helpful to people in making informed health care decisions. Ms. Bellows said transparency is an important factor in increasing public trust, and Chief Antone said the hospitals must be permitted to maintain their investigative process. The members agreed to table the issue until 2013 with the understanding that more information from other states, coupled with good discussions with the hospitals and quality care professionals, will identify common ground with regard to providing useful information to the public.

Sentinel Events
RTK AC 2011 recap

Public Records Exceptions Subcommittee
September 29, 2011

54 22 MRSA §8754: *sentinel events*

Renee Guigard, Assistant Attorney General, engaged in a lengthy discussion with the Subcommittee members. She explained the sentinel events reporting program and explained the purpose of the complete confidentiality of the reports to the Sentinel Events Team within DHHS. "Sentinel events" are serious medical errors and must be reported by hospitals; failure to report may result in a fine of up to \$10,000 imposed by DHHS. The purpose of the reporting is to identify individual and systemic problems and to ensure the errors do not occur again. The only situation in which the confidential information is released is when it is determined the information indicates immediate jeopardy, in which case the Sentinel Events Team reports to the DHHS licensing office. The Department submits a report to the Legislature every year. DHHS is concerned that if the reports are not kept confidential, the hospitals will not report the occurrence of sentinel events, "near misses" or other instances which may or may not be sentinel events.

Sentinel event information reported to DHHS is not released to anyone, including law enforcement and family members of affected patients. Patients or their personal representatives may be able to receive specific information from the hospitals themselves, or from other sources. Information about the imposition of fines is not available. The licensing function carried out by DHHS is handled by a completely different office and there is no overlap or sharing of information (except in the case of immediate jeopardy).

Ms. Bellows was concerned that members of the public do not have information about possibly underperforming hospitals, and information that would be useful in making medical and economic decision is not available. Perry Antone understood both sides: there is an accountability factor and if the information is made public, events would not be reported; but after an investigation, there should be some information available that helps people make medical decisions. AJ Higgins mentioned that if people had known about the long-standing problems at Downeast Community Hospital, maybe they would have made different medical decisions. Linda Pistner agreed that people should have information and pointed out that the need to provide that information is addressed by the Maine Quality Forum that is part of Dirigo Health.

The Subcommittee voted to ask the full Advisory Committee for advice on how to proceed with the review and evaluation of the sentinel events confidentiality provisions.

November 17, 2011

54 22 MRSA §8754: *sentinel events*

At the Subcommittee's invitation, representatives from the Department of Health and Human Services, Maine Hospital Association and Maine Medical Mutual Insurance

Sentinel Events
RTK AC 2011 recap

Company provided their recommendation that the Subcommittee make no changes to current law. Mr. Austin explained that the current law works well; without the confidentiality provision, he believes that health care providers and professionals would be reluctant to report sentinel events to the detriment of patients. Mr. Austin explained that an injured patient or the patient's attorney would have access to the underlying facts associated with the patient's care through their medical records and other internal documents of a hospital as part of the legal process. Kevin Wells of the Department of Health and Human Services agreed with Mr. Austin that the statute should not be changed; the current law strikes the right balance between the public's right to know and open communication between hospitals and the department. Mr. Wells also pointed out that not all state laws relating to medical errors have a confidentiality statute like Maine; he believes the confidentiality provision makes the Maine law stronger.

Ms. Bellows and Mr. Brown expressed concerns that, under the current law, members of the public may not have enough information about underperforming hospitals; patients should have access to the best care possible.

Due to time constraints, the Subcommittee tabled the exception and asked staff to review other states laws for the next meeting.

December 8, 2012

54 22 MRSA §8754: *sentinel events*

The Subcommittee continued its discussion of Title 22, section 8754 relating to sentinel events. Staff reviewed sentinel events laws in other states and reported that, of the 27 states other than Maine that require reporting of sentinel events, 15 states make those reports confidential. Representatives from the Maine Hospital Association and the Department of Health and Human Services reiterated their prior recommendation that the Subcommittee make no changes to current law. It is their belief that the current law works well; without the confidentiality provision, health care providers and professionals would be reluctant to report sentinel events to the detriment of patients. Ms. Pistner reminded the Subcommittee that the provision does not deprive an individual patient from initiating a lawsuit or from accessing their own medical records relating to the event. Mr. Brown continued to raise his concern that, under the current law, members of the public may not have enough information about underperforming hospitals; patients should have access to the best care possible. AJ Higgins stated that the public should be made aware of these events, but recognizes the need for give and take between hospitals and the State to ensure reporting. Mr. Higgins asked whether there might be some middle ground: could hospitals be required to annually report their sentinel events? The Maine Hospital Association expressed some concern that individual hospital reporting may affect an individual's medical privacy, especially in smaller communities. Mr. Brown suggested that the Subcommittee consider tabling the exception so further discussion can take place.

Sentinel Events
RTK AC 2011 recap

The Subcommittee voted 4-0 to make no change to Title 22, section 8754 at this time and to recommend that the Advisory Committee continue its review of the provision in 2012.

Right to Know Advisory Committee

December 8, 2011

Exception 54. The Subcommittee had discussed the complete confidentiality provided by the statute with regard to the reporting of “sentinel events” by hospitals and other providers to the Department of Health and Human Services. Ms. Pistner identified the tension that exists between helping hospitals to improve and giving consumers the information they need to make intelligent choices about which hospital to utilize. The Subcommittee did not recommend statutory changes with the understanding that the subject matter would be taken up again when the Subcommittee reconvenes in 2012; the Subcommittee can then explore the balance in more depth and determine if the public’s need for information can be satisfied without undermining the value of the Sentinel events program.

The Advisory Committee voted 14-0 to carry over Exception 54, to continue the discussion of Title 22, section 8754 in 2012.

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To: Right To Know Advisory Committee - Exemption Review Sub-Committee

**From: Maine Hospital Association, Maine Medical Association, Maine Osteopathic Association,
Medical Mutual Insurance Company of Maine**

Date: September 14, 2012

Re: Sentinel Event Confidentiality (Title 22 MRSA §8754)

Thank you for accepting these comments from MHA, MMA, MOA and Medical Mutual on your review of the confidentiality of sentinel event records in the possession of the Department of Health and Human Services (DHHS).

When the Exemption Review Sub-Committee sought input on this exemption (in 2010), MHA and others opposed changes to the exemption. We are unaware of any comment, provided either in writing or at a meeting of the Sub-Committee, which supported making any changes to the statute.

We believe the fact that your process produced no call for changes is evidence that the program is working as intended. Following are several other reasons not to change the confidentiality for sentinel event records.

1. **Removing confidentiality is bad policy.** The legislatively declared purpose of the Sentinel Event program (22 MRSA §8751-8756) is to improve performance: *"There is established under this chapter a system for reporting sentinel events for the purpose of improving the quality of health care and increasing patient safety."* Transparency and keeping the public informed are valid public purposes. However, they are not the purpose of the sentinel event statute and program.

The purpose of a sentinel event program is to improve quality. It works by making sure health care providers fully understand "what happened" and, with the help of DHHS, make changes to policies and practices where necessary to prevent similar events from happening again. Both the process of doing a root cause analyses and the results of that analyses drive health care quality improvement. In order for sentinel event systems to succeed, confidentiality is essential. The internal sentinel event systems must have full staff acceptance that the process is not about ascribing blame or shame associated with the event. Public reporting of these internal reviews will have a significant chilling effect on discovering all of the events as well as the facts that are necessary to understand the events.

2. **Confidentiality was critical to the enactment of the sentinel event law .** When the statute was enacted 10 years ago, it went through a lengthy legislative process. It was heard in April 2001, strongly opposed as drafted by many organizations,(including the above signers), and held-over until the next session where it was substantially amended and finally enacted in April 2002. ***The original bill did not have a confidentiality provision and that was a prime focus of our opposition.*** The bill was all but dead as originally proposed. It was only after confidentiality

was added that it got broader support and enactment. Removal of confidentiality is patently unfair because it undoes an important legislative compromise without which the program probably never would have existed.

3. **There is publicly available information about hospital quality.** Members of the RTKAC may not be aware of the burgeoning availability of hospital quality data. The leading collector and disseminator of the quality of care provided in hospitals in the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services (CMS). CMS maintains a publicly available website called "Hospital Compare" where data about dozens of quality metrics are available, by hospital name. While no system is perfect, this data set provides a much more comprehensive picture about the care provided at hospital facilities. In addition, private organizations both use the CMS data to create score cards and they supplement the CMS data with additional information they gather. Groups ranging from the Maine Health Management Coalition to Consumer Reports collect and disseminate data about health care quality. The amount and accessibility of the data is growing each year.

Attached is a matrix developed by MHA that shows most of the publicly available hospital-specific data that may be used to evaluate the quality and safety of care. The first column lists each quality metric, with the National Quality Forum reference number in most cases which provides the national definition of each metric. The top horizontal row defines whether the metric is collected at the state or federal level. CMS collects or calculates hospital-specific measures in 9 different programs. "MQF/MHDO" is the Maine Quality Forum/Maine Health Data Organization, which mandates the collection of certain hospital quality and safety data under Chapter 270. "MHMC" is the Maine Health Management Coalition which posts additional hospital-specific data on their publicly available web site. This is the data used in the state employees' hospital tiering program.

Not only is the raw data available publicly, but increasingly, groups are taking the data and putting them into more user-friendly scorecards and ranking systems such as you see at Consumer Reports.

4. **Hospitals are not public/government entities.** The foundation of the argument about the "public's right to know" seems misplaced in reference to hospitals. The purpose of the FOA Act is to provide transparency into what **government** is doing. There is obviously public curiosity and interest in many private organizations but the FOA Act does not apply to private organizations. As best we understand the arguments in favor of repealing the confidentiality those arguments are rooted in the desire for the public to know what is going on in hospitals, not in the desire to know what is going on at DHHS. The annual DHHS sentinel event report no doubt satisfies the public interest in understanding what DHHS is doing. Expanding the FOA Act, in effect, provide the public access to the internal documents of private organizations is simply inappropriate.

5. **Sentinel Events may be a misleading metric.** More reports at a particular facility do not necessarily mean more problems or poorer quality; this may be misleading indicia. A higher level of reporting may simply be a reflection of a more robust reporting culture at a particular hospital – which would be good for patient safety.

6. **Other States include confidentiality protections.** The federal DHHS Office of the Inspector General issued a report in 2008 on state reporting systems for hospital adverse events which found that **25 of 26 states with sentinel event programs provide confidentiality.**¹ *(This is not inconsistent with the staff memo that found fewer state confidentiality provisions. Staff indicated that they found a confidentiality provisions included in the sentinel event statute in 15 states. They noted that confidentiality could have still been provided somewhere else in each states' statutes.)*

7. **Several accountability measures are available.** There are plenty of accountability measures available to patients and their families who experience sentinel events, with a varying degree of transparency. These measures include: filing complaints directly with providers; filing complaints with professional licensing boards; filing complaints with DHHS facilities licensing; private tort litigation; and, patients going to the press/social media.

8. **The process to release sentinel event information will be difficult and expensive.** The state may not override the patient confidentiality provisions in federal laws such as HIPAA. Accordingly, before DHHS would be able to release sentinel event records, someone would have to redact the sentinel event records to prevent any personally identifying information or other such privacy related information from being disclosed.

Conclusion

The challenge you face in reviewing every single exemption ever enacted is daunting. The fact that you have a process to conduct the review is great and essential to doing a good job. The process revealed no objections to confidentiality and there are several persuasive reasons to keep the provision intact. The subcommittee needs to trust the process and not dramatically disrupt an important program grounded in improving health care quality.

MHA staff regrets not being able to attend this meeting in person. We take this issue quite seriously and are more than happy to meet with you to discuss this further.

¹ U.S. Department of Health and Human Services, Office of the Inspector General, *Adverse Events in Hospitals: State Reporting Systems* (2008), p. 13.

To: Public Records Exception Subcommittee
From: Katie Lybrand
Right to Know Advisory Committee Extern, Fall 2012
Date: November 7, 2012
Re: Comparison of states' sentinel events reporting and confidentiality provisions

I. Introduction

I conducted a nationwide statutory survey of state sentinel events reporting laws looking for trends in how states treat information of sentinel events. Overall, I found that most states, like Maine, have provisions deeming the information provided by facilities in sentinel events reporting to be confidential. However, states varied on the type of information they contain in their publicly available annual reports.

I did not thoroughly examine state definitions of sentinel or adverse events, but for purposes of this memo, you may assume that all states surveyed contain roughly similar definitions to Maine's, excerpted below.

22 M.R.S.A. § 8752 (4): "Sentinel event" means

- A. An unanticipated death, or patient transfer to another health care facility, unrelated to the natural course of the patient's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility;
- B. A major permanent loss of function unrelated to the natural course of the patient's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility that is present at the time of the discharge of the patient.
- C. An unanticipated perinatal death or major permanent loss of function in an infant with a birth weight over 2,500 grams that is unrelated to the natural course of the infant's or mother's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility; and
- D. Other serious and preventable events as identified by a nationally recognized quality forum and determined in rules adopted by the department pursuant to section 8756.

I have tried to organize this memo into an "at a glance" format, but if anyone would like further information, I am more than happy to share my research with citations to all of the state statutes and more detailed information.

II. States' Sentinel Events Reporting At a Glance

Number of states with mandatory reporting provisions:

21. California, Connecticut, Florida, Illinois, Kansas, Maine, Massachusetts, Minnesota, Nevada, New Hampshire, New York, Pennsylvania¹, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, and Wyoming. The District of Columbia also requires reporting.

Number of states with voluntary reporting provisions:

3. Indiana, Michigan, and Oregon.

Where do states make these reports?

All states require facilities to report to some division of the Department of Health. Massachusetts requires reporting to the Department of Health and to the Betsy Lehman Center, a state run center dedicated to “patient safety and medical error reduction.” Facilities in New York may also report to the Department of Health’s Patient Safety Center, in addition to facilities’ mandatory reports to the Department.

How many states require that the information provided to the reviewing body is to remain confidential?

All states, with the exception of Florida and California, and a few other states, such as South Carolina, with unclear statutes, explicitly provide that all information provided to the reviewing body by the medical facility is confidential.

California requires the reviewing body to post information from the outcomes of investigations of adverse events on the state’s website. Patient and staff identity are protected, but all other information contained in the reports is accessible.

South Carolina’s statute merely states that patient privacy must be protected but does not elaborate further on confidentiality. South Dakota’s statute contains no reference to confidentiality. Florida presents an interesting case, which I’ve discussed below.

The case of Florida

Florida passed a constitutional amendment stating that “patients have a right to have access to any records made or received in the course of business by a health care facility or provider relating to any adverse medical incident.” Fla. Const. art. X, § 25. The only limit to the information accessible to patients is that patient identity must be protected and other federal privacy restrictions observed.

However, in January of this year, the Supreme Court of Florida held the main implementing statutes of the provision unconstitutional because they attempted to impermissibly limit the scope of a constitutional provision. *West Florida Regional Medical Center, Inc. v. See*, 79 So.3d 1 (Fla. 2012). Therefore, I am not sure where the law stands in Florida currently, but it would seem that the broad language of the constitutional provision is the current governing language, which

¹ Pennsylvania also requires reporting of so called “near misses.” Near miss includes situations that did not result in patient injury or death, but only because of chance. *See* 40 P.S. § 1303.302; 28 Pa. Code § 51.3.

would mean that no records, other than those containing patient information, that relate to an adverse event are to be confidential.

What information is contained in the reports issued by the reviewing body (includes states with voluntary reporting)?

Although almost all of the states with mandatory reporting of sentinel events require the information to be kept confidential, the states vary on the information about the event they reveal in their publicly available reports.

Twelve states specifically state that the report is to include identifying information about the hospital, the type of event, and may contain background information about the event, rates of change, patient population, the facility's compliance history, and a comparison among facilities of similar size and type. Many of these states also require the report to contain summaries of the root cause analyses and corrective action plans provided by the facilities.

Four states, including Maine, do not place any identifying information, such as naming the facilities beyond designations such as "psychiatric hospital" or "general hospital," into their reports.

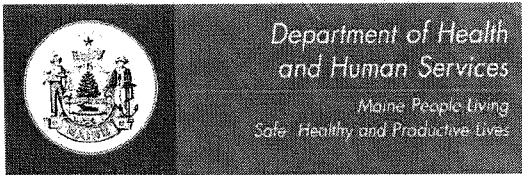
Seven states are unclear about the information that should be in the report, stating things like the report must "analyze" the past year's sentinel events and "make recommendations for improvement."

Interesting provisions

The review process of sentinel events in Illinois is interesting. The facility is required to report to the Department of Health. The Department then conducts a review and issues a report on the event. Next, the Health Care Event Reporting Advisory Committee reviews the recommendations contained in the Department's report at a public hearing. The Committee contains nine members, all appointed by the Department of Health. Membership must include one representative from hospitals, one individual representing ambulatory surgical treatment centers, and one representing physicians. The remaining members must include others with experience in "system based quality improvement and safety" and at least one public member. The statutes are not clear about what the Committee does after it reviews the Department's report, other than making recommendations on the list of reportable events.

Utah's statutes also contain a provision that allows the Department of Health to establish a multi-disciplinary advisory panel to assist it in carrying out the review process. If the Department establishes such a panel, its members must include representatives from facilities that are required to report under the statute.

In Vermont, hospitals are also required to submit "community reports" to the Department of Health and these reports are public. These reports must include measures of quality and patient safety, including comparisons to national standards. I have not examined these reports, but they may also involve discussions of sentinel events.



Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

Department of Health and Human Services
Commissioner's Office
221 State Street
11 State House Station
Augusta, Maine 04333-0011
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May 2, 2013

Senator Margaret M. Craven, Chair
Representative Richard R. Farnsworth, Chair
Members of the Joint Standing Committee on Health and Human Services
#100 State House Station
Augusta, ME 04333-0100

Dear Senator McCormick, Representative Strang Burgess, and Members of the Joint Standing Committee on Health and Human Services:

The Sentinel Events Reporting statute (22 M.R.S.A. §8754) directs the Department of Health and Human Services to submit an annual report to the Legislature, health care facilities and the public that includes summary data of the number and types of sentinel events of the prior calendar year. Attached is the Sentinel Events Report for calendar year 2012.

If you have any questions or would like further information, please feel free to contact Kenneth Albert, Director of the Division of Licensing and Regulatory Services at 287-6664.

Sincerely,

Mary C. Mayhew
Commissioner

MCM/klv

Attachment

5.A
Report

Sentinel Events

2012

Annual Report to the Maine State Legislature



Department of Health and Human Services
Division of Licensing and Regulatory Services

Maine People Living Safe, Healthy and Productive Lives

Sentinel Event Annual Report prepared by:

The Division of Licensing and Regulatory Services
Department of Health and Human Services
41 Anthony Avenue
11 State House Station
Augusta, ME 04333-0011

For further information please contact:

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This report may be found on the internet at:

http://www.maine.gov/dhhs/dlrs/medical_facilities/sentinelevents/home.html

The Maine Sentinel Event Reporting Statute may be found on the internet at:

<http://www.mainelegislature.org/legis/statutes/22/title22ch1684sec0.html>

The Rules Governing the Reporting of Sentinel Events may be found on the internet at:

<http://www.maine.gov/sos/cec/rules/10/144/144c114.doc>

Executive Summary

In 2002, Maine enacted Public Law 2001, Chapter 678 establishing a mandatory sentinel event reporting system. Since 2004 Maine Hospitals, Ambulatory Surgical Centers, End-Stage Renal Disease Facilities/Units, and Intermediate Care Facilities for Individuals with Intellectual Disabilities have been required to report whenever a serious, unexpected and preventable event, or medical error, known as a Sentinel Event, occurs. These events include unanticipated patient deaths, falls with serious injury, serious medication errors, patient suicide, surgery on the wrong body part, or an error resulting in a major loss of function. In 2012, 146 such cases were reported to the Maine Division of Licensing and Regulatory Services. The law further requires an annual report to the Legislature and public.

The number of cases reported, in and of itself, is not the most important information to focus on in this report. It is the lessons that are learned and the changes that are made as a result of these events that result in a safer environment for future patients.

In 2009, the statute requiring sentinel event reporting was amended to include new reporting requirements. Highlights of those changes include adoption of the National Quality Forum list of Serious Reportable Events and enhancements to the sentinel event definition to reduce ambiguity. Additionally, facilities are required to have standardized processes for the detection and reporting of all sentinel events.

In 2012, the most prevalent type of event reported was unanticipated death. Falls with significant injury, unanticipated transfers, pressure ulcers and retained foreign objects round out the top-five most reported adverse events.

Every facility is required to conduct an in-depth analysis after every sentinel event. The facility gathers a Root Cause Analysis team and launches a review of why the event occurred, and what steps will be undertaken to prevent a recurrence. The Sentinel Event Team and facility staff will share findings to stimulate discussion in an effort to identify opportunities for system improvements. The final report is sent to the Division within 45 days of discovery of the sentinel event. The Sentinel Event Team analyzes all events for statewide trends and features. Results are then shared in the Sentinel Event Annual Report.

The Maine program has been enriched by our active participation in the National Quality Forum (NQF) and the Agency for Healthcare Research and Quality (AHRQ). The NQF and the AHRQ bring together the 27 states, including the District of Columbia, with mandatory sentinel event reporting requirements to collaborate in a national dialogue on priorities and goals to improve patient safety by preventing adverse events in healthcare.

Background

This report is submitted in accordance with Maine law (22 M.R.S.A. §§8751-8756) that requires the Division of Licensing and Regulatory Services (the Division) to annually report to the Legislature, health care facilities, and the public on the aggregate number and type of sentinel events for the prior calendar year; including rates of change, causative factors, and activities to strengthen patient safety in Maine. This report is designed to:

- Build awareness of Maine's sentinel event reporting requirements and the follow-up process used by facilities and the State when events occur
- Provide aggregate information on the number and nature of sentinel events reported
- Identify patterns and make recommendations to improve the quality and safety of patient care
- Describe efforts to address under-reporting and enhance the role of sentinel event reporting in improving patient safety

Definition of Sentinel Event

Sentinel events are outcomes determined to be unrelated to the natural course of the patient's illness or underlying condition, or proper treatment of that illness or underlying condition. The law further characterizes sentinel events as:

- Unanticipated death
- A major permanent loss of function that is not present when the patient is admitted to the health-care facility
- Surgery on the wrong patient or wrong body part
- Hemolytic transfusion reaction involving administration of blood or blood products having blood group incompatibilities
- Patient suicide or attempted suicide resulting in serious disability
- Infant abduction or discharge to the wrong family
- Rape of a patient
- Unintended retention of a foreign object
- Patient death or serious disability associated with a fall
- Death or significant injury of a patient or a staff member resulting from a physical assault

In 2010, the entire list of the National Quality Forum (NQF) Serious Reportable List was formally adopted as part of the statutory changes. NQF serious events are structured around six categories: surgical, product or device, patient protection, care management, environmental, and potential criminal.

National Quality Forum

The National Quality Forum (NQF) is a national, consensus-driven private-public partnership aimed at developing common approaches to identification of events that are serious in nature and have been determined to be largely preventable. (National Quality Forum, 2002)¹ Sometimes referred to as "never events," the NQF list increasingly has become the basis for states' mandatory reporting system. (Rosenthal, 2007)² The list of NQF serious events is intended to capture events that are clearly identifiable and measurable, largely preventable, and of interest to the public and other stakeholders. Comparability of definitions enhances clarity about what must be reported and provides benchmarks for comparing experiences across states.

Reporting Requirements

Facilities must notify the Division within one business day of discovering an event. Through a confidential telephone exchange of information, the Sentinel Event Team determines whether the incident conforms to the statutory definition of a sentinel event. Upon confirmation that the event must be reported, the facility is required to submit a brief description of the incident via a restricted fax to the Division. A facility that knowingly violates any provision of the requirements is subject to a civil penalty.

Within 45 days of discovering a reportable event, the facility is required to share a written report with the State and the facility's quality improvement committee describing key elements of the event, the circumstances surrounding its occurrence, the actions taken or proposed to prevent its recurrence, methods for communicating the event, and planned risk reduction actions.

The Sentinel Event Team may conduct an onsite review at each facility reporting a sentinel event to assess the incident and to ensure that all relevant factors are considered in the development of an action plan. The on-site review occurs shortly after the incident is first reported so that findings can be incorporated into the facility's action plan. The facility's Chief Executive Officer (CEO) is briefed during this time by the Sentinel Event Team to assure his/her active engagement in understanding factors leading to the event and plans for mitigating its recurrence. The entire medical record of the patient is reviewed during the site visit to identify contributing factors that may have gone unnoticed and have affected the outcome before, during, and after an event. This process provides an independent assessment that augments the facility's own internal review of the incident.

¹ National Quality Forum. (2002). Serious reportable events in healthcare: A consensus report. Washington, DC: The National Quality Forum.

² Rosenthal, J. & Takach, M. (December 2007). 2007 guide to state adverse event reporting systems. (State Health Policy Survey Report, Vol. 1, No. 1). Portland, ME: National Academy for State Health Policy.
http://www.nashp.org/Files/shpsurveyreport_adverse2007.pdf

Throughout their review of a sentinel event, the Sentinel Event Team studies relevant standards of care and evidence-based research to help inform their review of the facility's response to an event. Depending on the nature of the event, content experts may also be consulted to expand understanding of the possible system failures or other factors that may have contributed to a sentinel event.

Upon receipt of the facility's full written report, the Sentinel Event Team confirms that direct causal factors have been examined by the facility and that corrective actions are appropriate, comprehensive, and implemented. If the report is accepted, a letter attesting to that fact is sent to the facility's CEO. Should more information be required, a letter requesting specific details is sent to the Risk Manager with a copy to the CEO. When this report is complete, a final approval letter is sent to the facility. Should it be necessary, the Sentinel Event Team may visit the facility to follow-up on the implementation of the action plan. A flow chart diagramming the sentinel event case review process can be found in Appendix A.

Database Implementation

In 2012, the Sentinel Event Program implemented the revised Sentinel Event Database to gather and track data. Information collected on sentinel events and their reviews are entered into this confidential database which provides an updated management system for all reports coming into the program. This database generates multi-level reporting, allowing for more efficient trend tracking, and is a step forward in electronic record keeping.

Confidentiality Provisions

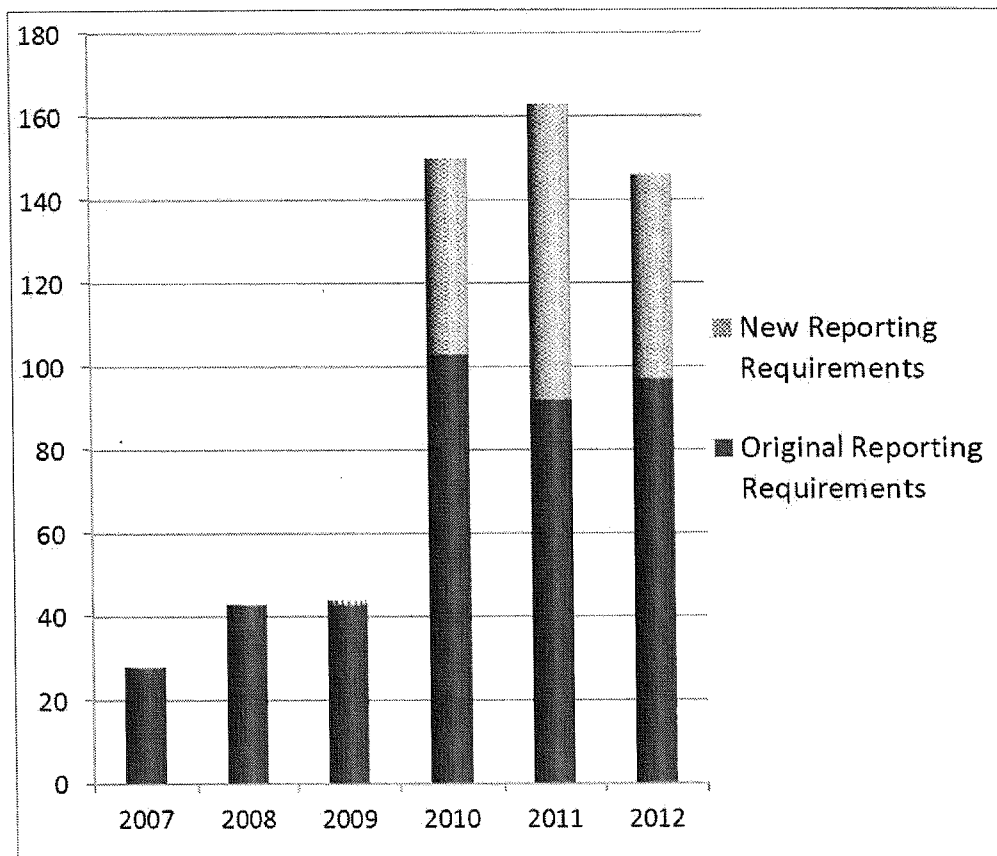
By law, all sentinel event information submitted to the Division is considered privileged and confidential. No information about facilities or providers is discoverable or made public. A firewall is maintained between the sentinel event program and the survey unit that regulates facility licensing within the State. The Sentinel Event Team is responsible for reviewing the initial reported event, conducting on-site reviews, ensuring that all contributing factors to an event are identified, and that action plans are appropriate and implemented. The Sentinel Event Team is permitted to share information with the licensing team if it determines that a sentinel event represents immediate jeopardy to the public. The information shared is limited to the Conditions of Participation for the Medicare and Medicaid certification program that was impacted by the event. This ensures that the immediate jeopardy can be investigated and separate and public corrections be made to avoid harm to the public.

Sentinel Events Historically Reported

A total of 651 sentinel events have been reported to the Division since the initiation of the program in 2004. Following focused efforts to ensure that all facilities had a heightened awareness and full understanding of the reporting requirements, reporting began to increase in 2008.

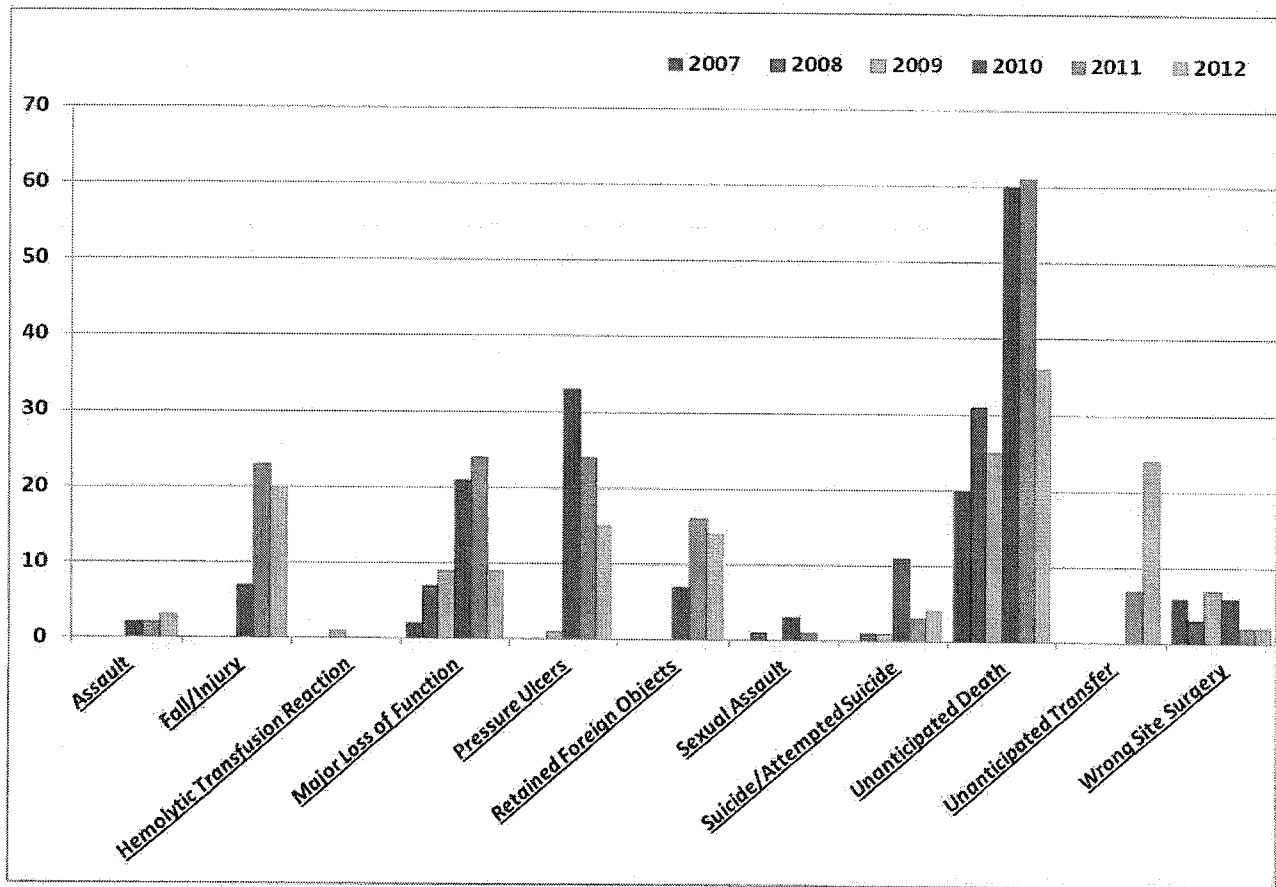
In 2010, a dramatic increase in sentinel event reporting occurred and continued through 2012. This spike in reports reflects a greater appreciation of the requirements and changes in the statutory requirements. There is also a growing awareness of the benefit of increased transparency with an emphasis on establishing a 'blame free' culture and a focus on systems improvements and reduction of the likelihood of a recurrence.

Table 1. Sentinel Events Reported, by Year, 2007-2012



Sentinel events reported during the period from 2004-2006 averaged approximately 25 sentinel events annually.

Table 2. Sentinel Events Reported, by Category, 2007-2012

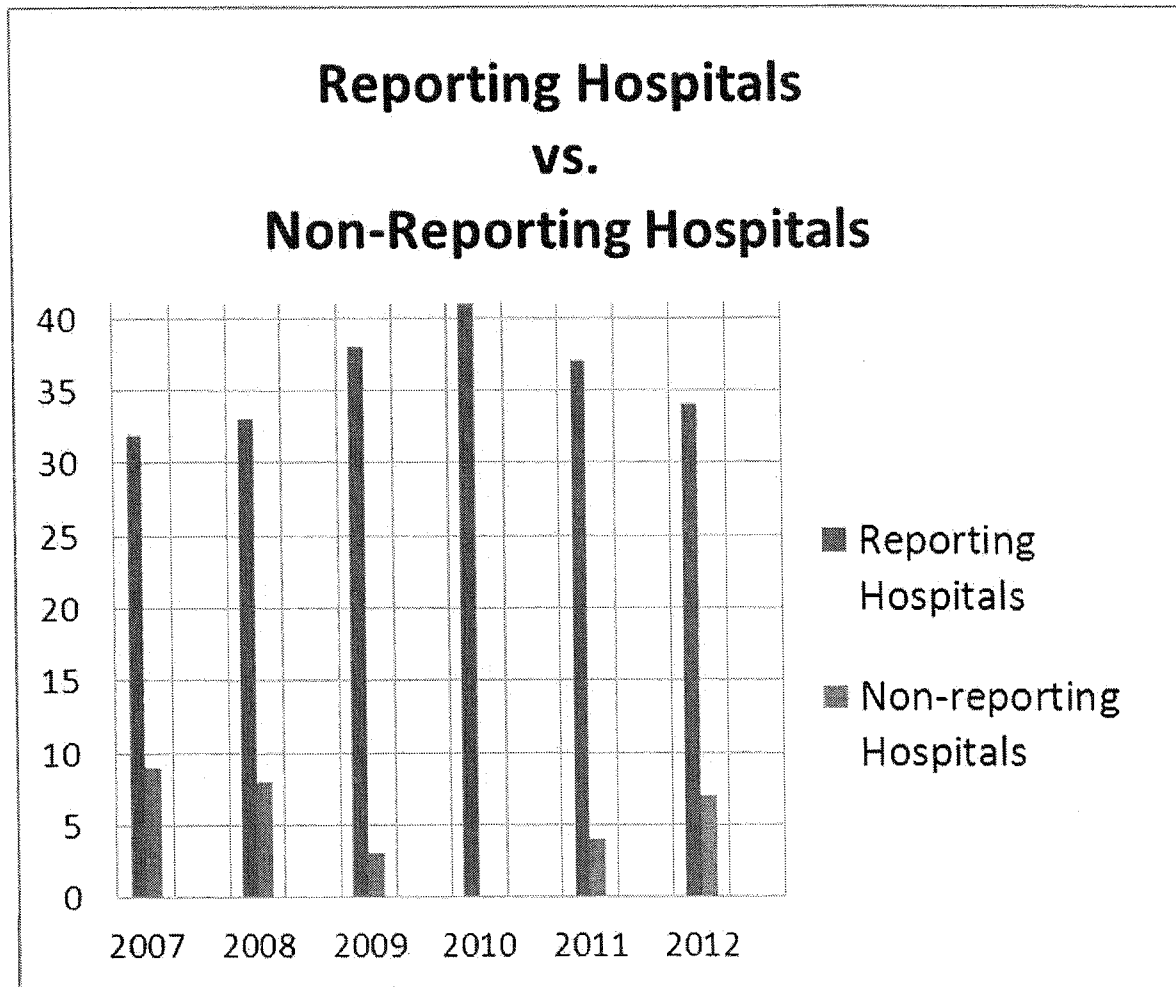


	2007	2008	2009	2010	2011	2012
Assault	0	0	0	2	2	3
Fall/Injury*	0	0	0	7	23	26
Hemolytic Transfusion Reaction	0	0	1	0	0	0
Major Loss of Function	2	7	9	21	24	9
Pressure Ulcers*	0	0	1	33	24	15
Retained Foreign Objects*	0	0	0	7	16	14
Sexual Assault	0	1	0	3	1	0
Suicide/Attempted Suicide	0	1	1	11	3	4
Unanticipated Death	20	31	25	60	61	36
Unanticipated Transfer	0	0	0	0	7	24
Wrong Site Surgery	6	3	7	6	2	2

*Indicates new reporting requirements added to category 2010

During the 9 years of reporting sentinel events, hospitals have steadily increased participation in the program. By 2006, only 61% of all Maine hospitals had reported a sentinel event. By the end of 2010, 100% of the 41 acute care hospitals in Maine had reported at least one sentinel event. In 2012, there was a slight decline in the number of reporting facilities.

Table 3. Sentinel Events Reporting vs. Non-reporting Hospitals, 2012



	2007		2008		2009		2010		2011		2012	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Reporting Hospitals	32	78%	33	80%	38	93%	41	100%	37	90%	34	83%
Non-reporting Hospitals	9	22%	8	20%	3	7%	0	0%	4	10%	7	17%
Total	41	100%	41	100%	41	100%	41	100%	41	100%	41	100%

Sentinel Events Reported in 2012

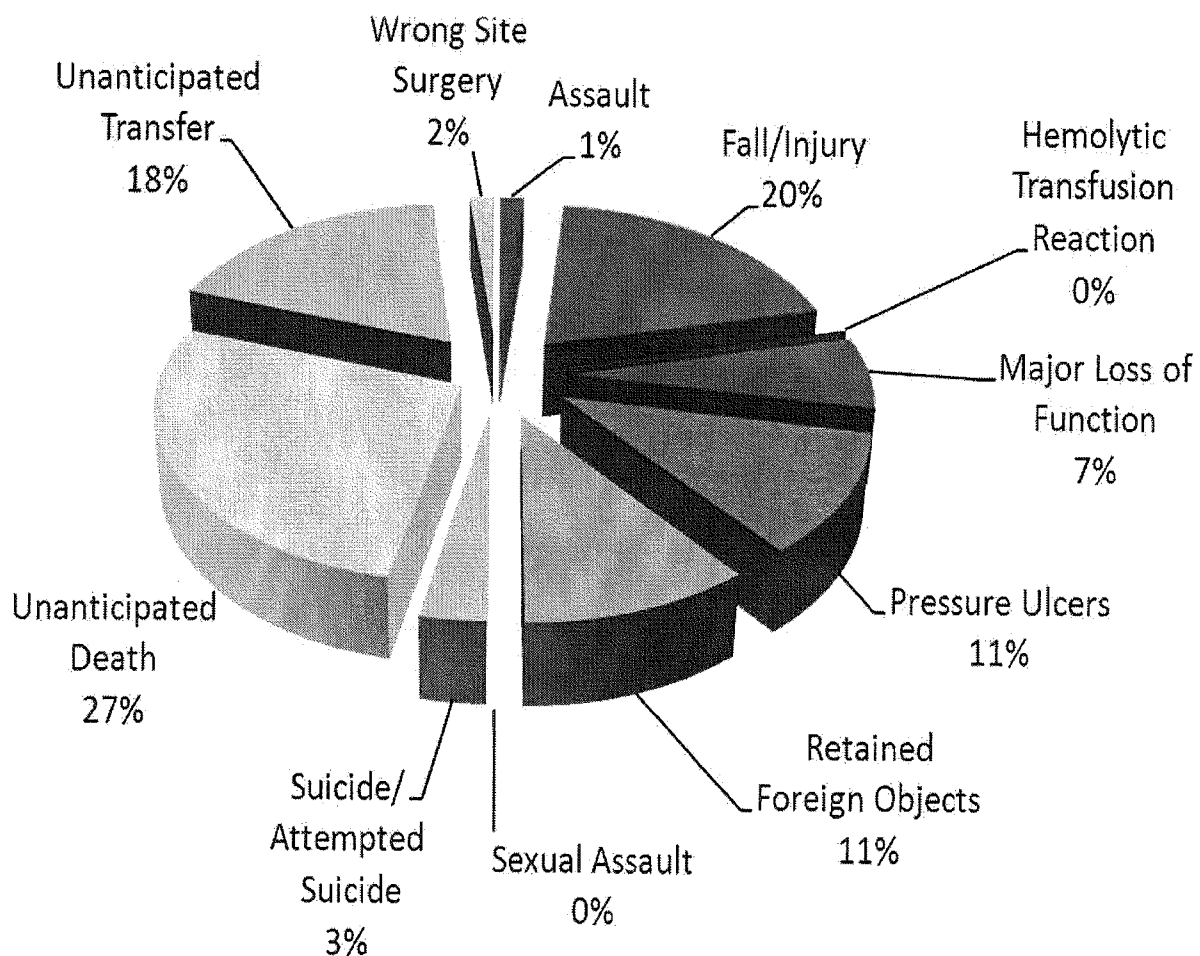
NUMBER OF SENTINEL EVENTS REPORTED IN 2012

There were 146 sentinel events reported in 2012. This is a slight decrease over the 163 reported events in 2011.

CATEGORY OF SENTINEL EVENTS

Table 4 indicates sentinel events by category in 2012. Unanticipated deaths were reported in the majority of cases at 36 (27%). Fall with Injury was the second leading event at 26 (20%) following by unanticipated transfer the third leading event at 24 (18%).

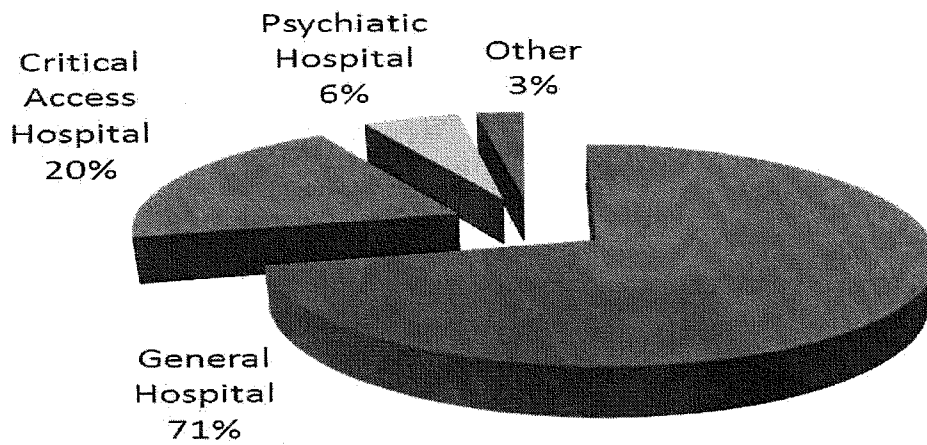
Table 4. Sentinel Events Reported, by Category of Event, 2012



TYPE OF FACILITIES REPORTING SENTINEL EVENTS IN 2012

In 2012, general hospitals represented 71% of the facilities that reported to the sentinel event program. Critical Access Hospitals accounted for 20% and Psychiatric hospitals represented 6%, while ESRD (dialysis) facilities, Ambulatory Surgical Centers and ICF/ID facilities reported 3% of cases.

Table 5. Sentinel Events Reported, by Facility Type, 2012

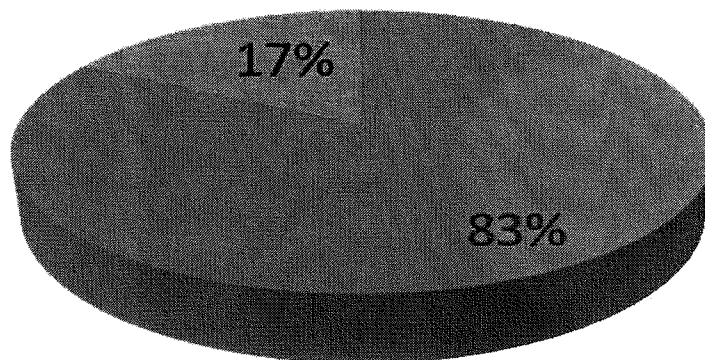


REPORTING VERSUS NON-REPORTING HOSPITALS, 2012

As illustrated below, 83% of the 41 hospitals had reported a sentinel event to the Division for review in 2012.

Table 6. Reporting Vs. Non-Reporting Hospitals, 2012

34 ■ Reporting Hospitals **7** ■ Non-reporting Hospitals



Conclusion

Maine's sentinel event reporting system focuses on identifying and deterring serious, preventable incidents. Mandatory reporting is the primary tool for the State to hold facilities accountable for disclosing that an event has occurred and that appropriate action has been taken to remedy the situation. The system was designed to learn from mistakes, not punish individual practitioners or providers.

To be effective, the system requires the participation of all hospitals and other reporting entities. Only by understanding the full scope of the problem can strategies be developed to improve patient safety throughout the State.

Program Goals for 2013

During 2013, the sentinel events program will work closely with hospitals and others to strengthen the reliability of reporting. To achieve this, the sentinel events program will do the following:

- Implement the updated 2011 National Quality Forum List of Serious Reportable Events
- Continue to utilize data from Maine Health Data Processing Center's all-payer claims database (APCD) to augment a review of events being reported
- Continue to perform on-site visits with hospitals and other facilities. This may include a review of documents to determine compliance with the Rules Governing the Reporting of Sentinel Events
- Continue to assess the adequacy of a facility's internal systems for detecting and reporting events
- Continue to analyze complaint data to determine if a situation reported as a complaint is a reportable sentinel event

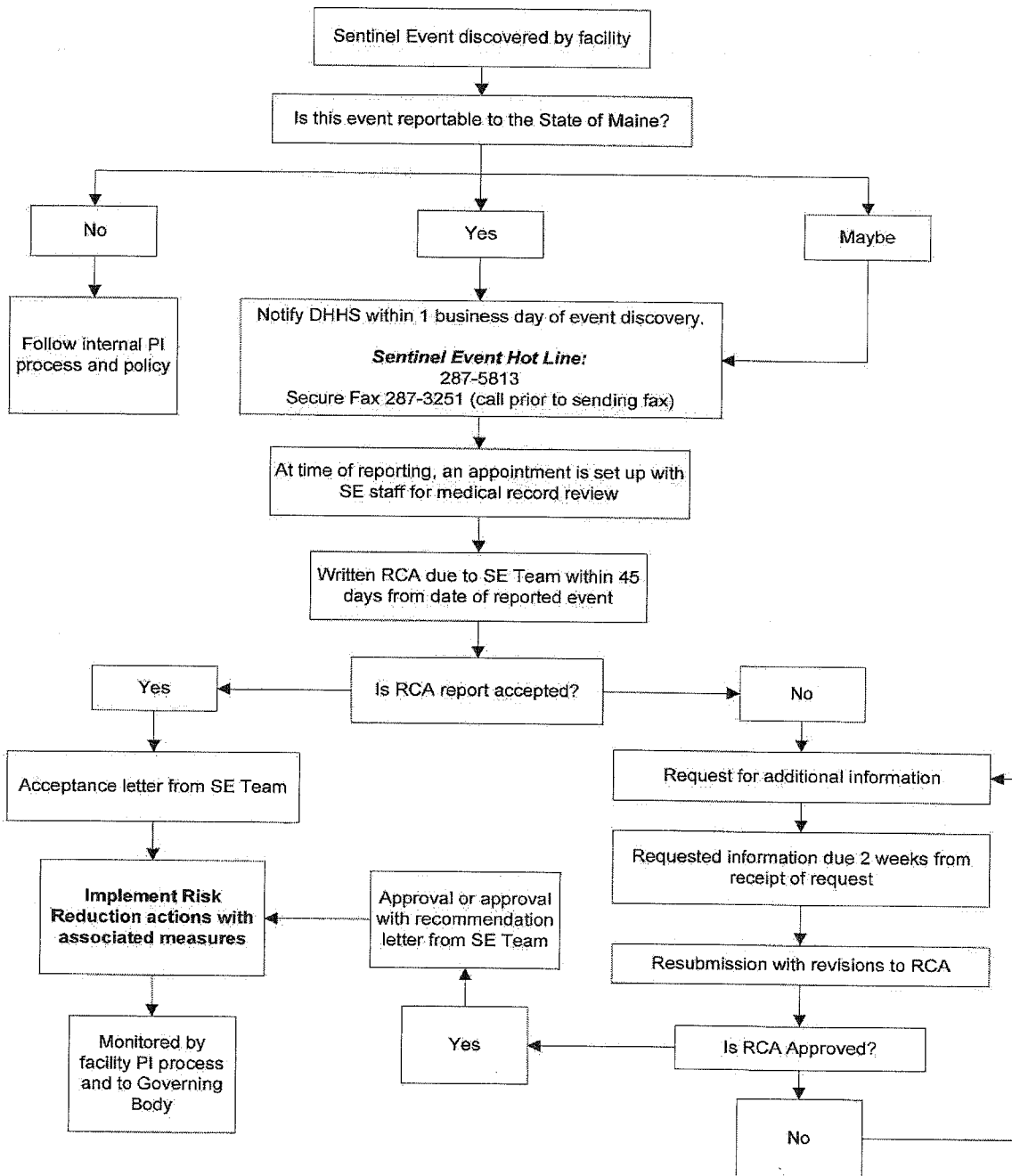
To achieve its goals, the Sentinel Events Program will continue to maintain ongoing communications with Maine hospitals, other licensed facilities and stakeholders regarding reporting requirements and lessons that can be learned to prevent events from being repeated. The Sentinel Events Program is committed to maintaining a non-punitive environment that allows for a collaborative approach for identifying serious adverse events and working toward joint solutions for reducing their occurrence.

The predominant goal of the Sentinel Events Program is to have a reporting system that helps facilitate the improvement of quality health care for all Maine's citizens.

Appendix A

Sentinel Event Process Flow

State of Maine Department of Health and Human Services
 Division of Licensing and Regulatory Services



Non-Discrimination Notice

The Department of Health and Human Services (DHHS) does not discriminate on the basis of disability, race, color, creed, gender, sexual orientation, age, or national origin, in admission to, access to, or operations of its programs, services, or activities, or its hiring or employment practices. This notice is provided as required by Title II of the Americans with Disabilities Act of 1990 and in accordance with the Civil Rights Act of 1964 as amended, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, the Maine Human Rights Act and Executive Order Regarding State of Maine Contracts for Services. Questions, concerns, complaints or requests for additional information regarding the ADA may be forwarded to the DHHS ADA Compliance/EEO Coordinators, #11 State House Station, Augusta, Maine 04333, 207-287-4289 (V), or 287-3488 (V)1-888-577-6690 (TTY). Individuals who need auxiliary aids for effective communication in program and services of DHHS are invited to make their needs and preferences known to one of the ADA Compliance/EEO Coordinators. This notice is available in alternate formats, upon request.

Public Records Exceptions Subcommittee

**Existing Public Records Exceptions, Titles 26 – 39-A
Statutes remaining after 2012 review**

Revised 7/19/2013 9:12 AM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
1	22	1696-D	Title 22, section 1696-D, relating to the identity of chemical substances in use or present at a specific location if the substance is a trade secret	<ul style="list-style-type: none"> • DHHS 	<ul style="list-style-type: none"> • No record of any experience • No changes 	11/4/10: tabled 9/12/11: REPEAL 5-1 (LP) 9/29/11: wait for additional information 11/17/11: No change with letter to ENR and HHS – review letter 12/8/11: Approved letter	12/8/11: No change with letter to ENR and HHS 2012: Proposed amendment (LD 420)
2	22	1696-F	Title 22, section 1696-F, relating to the identity of a specific toxic or hazardous substance if the substance is a trade secret	<ul style="list-style-type: none"> • DHHS 	<ul style="list-style-type: none"> • No record of any experience • No changes 	11/4/10: tabled 9/12/11: REPEAL 5-1 (LP) 9/29/11: wait for additional information 11/17/11: No change with letter to ENR and HHS – review letter 12/8/11: Approved letter	12/8/11: No change with letter to ENR and HHS 2012: Proposed amendment (LD 420)

Public Records Exceptions Subcommittee
Existing Public Records Exceptions, Titles 26 – 39-A
Statutes remaining after 2012 review
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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
3	26	3	Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor	<ul style="list-style-type: none"> • DECD • SPO/OPM • DOL 	<ul style="list-style-type: none"> • DECD • SPO/OPM? • DOL: no more than one or 2/year; NO CHANGE 	9/13: Tabled-- discuss potential amendments with DOL 11/8: Amend; accepted draft	Propose repeal and replace (LD 420)
4	26	934	Title 26, section 934, relating to report of the State Board of Arbitration and Conciliation in labor dispute	<ul style="list-style-type: none"> • State Board of Arbitration and Conciliation 	<ul style="list-style-type: none"> • No requests • NO CHANGE 	9/13: Tabled—ask Board for input 11/8: Amend	Propose amendment (LD 420)
5	28-A	755	Title 28-A, section 755, relating to liquor licensees' business and financial records	<ul style="list-style-type: none"> • DAFS: BABLO 	<ul style="list-style-type: none"> • Not being collected now • Unresolved by Legislature in 125th • Support change but recommend NO CHANGE for now 	9/13: Tabled until 2013; Dept. legislation expected in 126 th Legislature, First Session	Tabled
6	29-A	152	Title 29-A, section 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles	<ul style="list-style-type: none"> • SOS 	<ul style="list-style-type: none"> • Estimate: 12-20 times per year) • NO CHANGE – comply with Federal Driver Privacy Protection Act 	8/8: Amend	Propose amendment (LD 420)
7	29-A	257	Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system	<ul style="list-style-type: none"> • SOS 	<ul style="list-style-type: none"> • No request • NO CHANGE 	8/8: Tabled—flag inconsistency with other provisions; ask OIT for input 9/13: Tabled 11/8: Repeal	Propose repeal (LD 420)

Public Records Exceptions Subcommittee

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8	29-A	517	4	Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles	• SOS	<ul style="list-style-type: none"> Estimate: 1-2 every couple of years NO CHANGE 	8/8: Amend—strike 2 nd ¶ because same language in #12	Propose amendment (LD 420)
9	30-A	503	1-A	Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force	• Counties – Joe Brown and Tim Leet? • <i>Municipalities</i>	<ul style="list-style-type: none"> Kennebec County: No requests NO CHANGES 	11/8: Tabled; ask AG for input	Tabled
10	30-A	2702	1-A	Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force	• <i>Municipalities</i>	See # 20	11/8: Tabled; ask AG for input	Tabled
11	32	2599		Title 32, section 2599, relating to medical staff reviews and hospital reviews – osteopathic physicians	• Osteopathic Licensing Board	•	11/8: Tabled; ask for input from Board and providers 11/15: Tabled	Tabled
12	32	3296		Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees	• Medical Licensing Board	<ul style="list-style-type: none"> Accusations of unprofessional conduct or incompetence if found to be without merit are damaging Investigative records include individual patient info NO CHANGE 	11/8: Tabled; ask for input from Board and providers 11/15: Tabled	Tabled

Public Records Exceptions Subcommittee

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13	32	13006	Title 32, section 13006, relating to real estate grievance and professional standards committees hearings	<ul style="list-style-type: none"> Real Estate Commission 	<ul style="list-style-type: none"> No experience; applies to records of hearings held by professional trade associations NO POSITION: Why part of Real Estate Brokerage Act? 	11/8: Tabled; ask Maine Association for input; is this necessary?	Tabled
14	32	16607	Title 32, section 16607, subsection 2, relating to records obtained or filed under the Maine Securities Act	<ul style="list-style-type: none"> DPFR: Securities Regulation 	<ul style="list-style-type: none"> Seven requests: 5 denied to protect investigative records; 2 denied because only investigative records requested NO CHANGE 	11/8: Tabled; ask Office of Securities for input	Tabled
15	34-A	5210	Title 34-A, section 5210, subsection 4, relating to the State Parole Board report to the Governor	<ul style="list-style-type: none"> Dept. of Corrections 	<ul style="list-style-type: none"> Requested 2-3 times per year AMEND: clarify that applies regardless of entity advising Governor 	8/8: Tabled—ask Governor's Office for input 9/13: Tabled 11/8: Tabled	Tabled
16	35-A	1311-B	Title 35-A, section 1311-B, subsections 1, 2 and 4, relating to public utility technical operations information	<ul style="list-style-type: none"> PUC 	<ul style="list-style-type: none"> Occasional requests NO CHANGE 	11/8: Tabled; ask PUC for input	Tabled
17	35-A	1316-A	Title 35-A, section 1316-A, relating to Public Utilities Commission communications concerning utility violations	<ul style="list-style-type: none"> PUC 	<ul style="list-style-type: none"> No requests NO CHANGE 	11/8: Tabled; ask PUC for input	Tabled

Public Records Exceptions Subcommittee

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18	35-A	8703	Title 35-A, section 8703, subsection 5, relating to telecommunications relay service communications	<ul style="list-style-type: none"> PUC 	<ul style="list-style-type: none"> Does not come through PUC Could be worded more clearly 	11/8: Tabled; ask PUC for input	Tabled
19	35-A	9207	Title 35-A, section 9207, subsection 1, relating to information about communications service providers	<ul style="list-style-type: none"> PUC ConnectME Authority 	<ul style="list-style-type: none"> No requests NO CHANGE 	11/8: Tabled; ask PUC for input	Tabled
20	36	575-A	Title 36, section 575-A, subsection 2, relating to forest management and harvest plan provided to Bureau of Forestry and information collected for compliance assessment for Tree Growth Tax Law	<ul style="list-style-type: none"> Dept. of Conservation Maine Revenue Services 	<p>DOC:</p> <ul style="list-style-type: none"> New, closely parallels §579 Never received a request under §579 NO CHANGES 	(added by PL 2011, c. 619) 11/8: Tabled; ask for input from Bureau of Forestry and MRS	Tabled
21	36	579	Title 36, section 579, relating to the Maine Tree Growth Tax Law concerning forest management plans	<ul style="list-style-type: none"> <i>Municipal assessors</i> Maine Revenue Services 	<p>MRS:</p> <ul style="list-style-type: none"> No position <p>MUNICIPALITIES</p> <ul style="list-style-type: none"> 14 municipalities responded Few requests 7 recommend NO CHANGE 2 recommend AMEND to allow Board of Assessors access 5 recommend that AMEND to make plans public 	11/8: Tabled; ask for input from Bureau of Forestry and MRS and municipal assessors	Tabled

Public Records Exceptions Subcommittee
Existing Public Records Exceptions, Titles 26 – 39-A
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22	36	1106-A	3 Title 36, section 1106-A, subsection 3, paragraph D, relating to forest management and harvest plan made available for Farm and Open Space Tax Law	<ul style="list-style-type: none"> • <i>Municipal assessors</i> • Dept. of Conservation • Maine Revenue Services 	<p>MUNICIPALITIES</p> <ul style="list-style-type: none"> • 12 municipalities responded • No requests (new law) • 6 recommend NO CHANGE • 2 recommend AMEND to allow Board of Assessors access • 4 recommend AMEND to allow public access <p>DOC:</p> <ul style="list-style-type: none"> • New, closely parallels §579 • Never received a request under §579 • No provision to review plans under this section • NO POSITION <p>MRS:</p> <ul style="list-style-type: none"> • NO POSITION 	<p>(added by PL 2011, c. 618, §7)</p> <p>11/8: Tabled; ask for input from DOC, MRS and municipal assessors</p>	Tabled
23	37-B	708	3 Title 37-B, section 708, subsection 3, relating to documents collected or produced by the Homeland Security Advisory Council	<ul style="list-style-type: none"> • DVEM: MEMA 	<ul style="list-style-type: none"> • No requests • NO CHANGE 	<p>11/8: Tabled; ask for more information</p>	Tabled

Public Records Exceptions Subcommittee

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24	37-B	797	Title 37-B, section 797, subsection 7, relating to Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency reports of hazardous substance transportation routes	• DVEM: MEMA	<ul style="list-style-type: none"> • 1 – 2 request per year for general info • NO CHANGE 	11/8: Tabled; ask for more information	Tabled
25	38	414	Title 38, section 414, subsection 6, relating to records and reports obtained by the Board of Environmental Protection in water pollution control license application procedures	• DEP • BEP	<ul style="list-style-type: none"> • DEP: 1-2 requests per year • NO CHANGE • BEP: No need to access info in proceedings • NO POSITION; Clarify by including cross-reference to definition of trade secret? 	11/8: Tabled; ask DEP and BEP for more information	Tabled
26	38	470-D	Title 38, section 470-D, relating to individual water withdrawal reports	• DEP	<ul style="list-style-type: none"> • No requests • Information reported in aggregate • NO CHANGE 	11/8: Tabled; ask DEP for more information	Tabled
27	38	585-B	Title 38, section 585-B, subsection 6, relating to mercury reduction plans for air emission source emitting mercury	• DEP	<ul style="list-style-type: none"> • No requests by facilities to keep information confidential • REPEAL 	11/8: Amend	Propose amendment (LD 420)

Public Records Exceptions Subcommittee

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28	38	585-C	Title 38, section 585-C, subsection 2, relating to the hazardous air pollutant emissions inventory	• DEP	<ul style="list-style-type: none"> No requests by facilities to keep information confidential for at least 10 years REPEAL 	11/8: Amend	Propose repeal (LD 420)
29	38	1310-B	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	• DEP	<ul style="list-style-type: none"> Few requests for each type of info; Concerns that electronic filing often means DEP has multiple copies of confidential information; lack of locked storage space for confidential records NO CHANGE 	11/8: Tabled; ask DEP for more information	Tabled
30	38	1610	Title 38, section 1610, subsection 6-A, paragraph F, relating to annual sales data on the number and type of computer monitors and televisions sold by the manufacturer in this State over the previous 5 years	• DEP	<ul style="list-style-type: none"> No requests Manufacturers do mark portions of annual filing as confidential and info is segregated from public files NO CHANGE 	11/8: Tabled; ask DEP for more information	Tabled

Public Records Exceptions Subcommittee

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31	38	1661-A	4 Title 38, section 1661-A, subsection 4, relating to information submitted to the Department of Environmental Protection concerning mercury-added products	• DEP	<ul style="list-style-type: none"> • 2 requests made for confidential info • DEP followed process in § 1310-B, sub-§ 2 and requested info was able to be provided or summarized info provided • NO CHANGE 	11/8: Tabled; ask DEP for more information	Tabled
32	38	2307-A	1, 5 Title 38, section 2307-A, subsections 1 and 5, relating to information submitted to the Department of Environmental Protection concerning toxics use and hazardous waste reduction (REPEALED 7/1/12)	• DEP	<ul style="list-style-type: none"> • Only 1 request • Replaced by new statute; rules pending to implement confidentiality provision (38 MRSA § 2324, sub-§3) • CONTINUE; NO CHANGE 	11/8: Tabled; ask DEP for more information	Tabled
33	39-A	153	5 Title 39-A, section 153, subsection 5, relating to the Workers' Compensation Board abuse investigation unit	• Workers' Compensation Board	<ul style="list-style-type: none"> • Average of 6 times per year • NO CHANGE 	11/8: Amend; but HOLD for review in 2013	Tabled
34	39-A	153	9 Title 39-A, section 153, subsection 9, relating to the Workers' Compensation Board audit working papers	• Workers' Compensation Board	<ul style="list-style-type: none"> • No requests • NO CHANGE 	11/8: Tabled; ask WCB for more information	Tabled

Public Records Exceptions Subcommittee
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35	39-A	355-B	11	Title 39-A, section 355-B, subsection 11, relating to records and proceedings of the Workers' Compensation Supplemental Benefits Oversight Committee concerning individual claims	<ul style="list-style-type: none"> Workers' Compensation Board 	<ul style="list-style-type: none"> No requests NO CHANGE 	11/8: Tabled; ask WCB for more information	Tabled
36	39-A	403	3	Title 39-A, section 403, subsection 3, relating to workers' compensation self-insurers proof of solvency and financial ability to pay	<ul style="list-style-type: none"> BOI 	<ul style="list-style-type: none"> No requests NO CHANGE 	11/8: Tabled; ask BOI for more information	Tabled
37	39-A	403	15	Title 39-A, section 403, subsection 15, relating to records of workers' compensation self-insurers	<ul style="list-style-type: none"> BOI 	<ul style="list-style-type: none"> Requests are rare NO CHANGE 	11/8: Tabled; ask BOI for more information	Tabled
38	39-A	409		Title 39-A, section 409, relating to workers' compensation information filed by insurers concerning the assessment for expenses of administering self-insurers' workers' compensation program	<ul style="list-style-type: none"> BOI 	<ul style="list-style-type: none"> No requests AMEND; clarify that already included within § 403, sub-§ 15 exception 	11/8: Tabled; ask BOI for more information	Tabled

G:\STUDIES 2013\Right to Know Advisory Committee\Existing Public Records Exceptions Review\Chart - to start 2013.docx (7/19/2013 9:28:00 AM)

Hon. David R. Hastings III, Chair
Hon. Joan M. Nass
Perry Antone
Shenna Bellows
Percy L. Brown, Jr
Michael Cianchette
Richard Flewelling
Mary Ann Lynch



A. J. Higgins
Mal Leary
William Logan
Judy Meyer
Kelly Morgan
Linda Pistner
Harry Pringle
Mike Violette

STATE OF MAINE
RIGHT TO KNOW ADVISORY COMMITTEE

November 15, 2012

Brian MacMaster, Chair, Board of Trustees
Maine Criminal Justice Academy
15 Oak Grove Road
Vassalboro, Maine 04989

Dear Mr. MacMaster:

The Right to Know Advisory Committee requests that the Board of Trustees consider establishing a model encryption policy for radio transmissions by law enforcement agencies and first responders that reflects current practices.

As you may know, the Right to Know Advisory Committee was created by the Legislature 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. Recently, the Maine Freedom of Information Coalition informed us of its concern that public safety agencies and first responders may begin encrypting radio transmissions that are not currently encrypted as part of the federally mandated switch from an analogue to a digital radio system.

As part of our work on this matter, we established the Encryption Subcommittee to study the issue and report its findings and recommendations to us. The Subcommittee was composed of Linda Pistner, chair (Office of the Attorney General), Rep. Joan Nass, Perry Antone (representing law enforcement interests), Joe Brown (representing county or regional interests), Mike Cianchette (representing State Government interests), AJ Higgins (representing broadcasting interests), Mal Leary (representing a statewide coalition of advocates of freedom of access), and Judy Meyer (representing newspaper publishers).

The Encryption Subcommittee held two meetings this summer and heard testimony from the Maine Freedom of Information Coalition, Maine Association of Broadcasters, and the Department of Public Safety. After considerable discussion, the Subcommittee made the following recommendations to us: 1) That no changes be made to existing law regarding the encryption of radio transmissions by public safety agencies and first responders; and 2) That we send a letter to the Board of Trustees of the Maine Criminal Justice Academy asking that it consider creating a model encryption policy for consideration by local law enforcement agencies.

G.A.1

The Advisory Committee has adopted those recommendations and this letter is our formal request that you consider establishing a model encryption policy that reflects current practices for consideration by local law enforcement agencies. We also request that you please inform us of any decisions or actions taken pursuant to this letter.

Thank you for your consideration of our requests.

Sincerely,

A handwritten signature in cursive script that reads "Dave Hastings". The signature is written in black ink on a white background.

Senator David Hastings III
Chair

cc: Suzanne Goucher, MFOIC

G.A.2

BOARD OF TRUSTEES MAINE CRIMINAL JUSTICE ACADEMY

December 6, 2012

Senator David Hastings III, Chair
Right to Know Advisory Committee
Maine State Legislature
13 State House Station
Augusta, ME 04333-0013

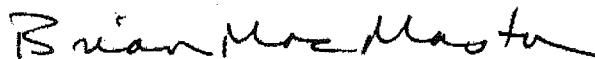
Dear Senator Hastings:

My apologies for the late response to your letter of November 15, 2012, but, for whatever reason, I only received the letter a couple of days ago.

The Board of Trustees of the Maine Criminal Justice Academy does not formulate model policies for law enforcement. The Board is charged by the Legislature with developing standards for law enforcement policies mandated by the Legislature. It is then the responsibility of each law enforcement agency in the State to develop its own policy that, at a minimum, incorporates the standards promulgated by the Board. The Board has no statutory authority to promulgate standards for policies other than those mandated by the Legislature.

Model policies for law enforcement are developed and disseminated by the Maine Chiefs of Police Association as a service to its membership. Such is the case with the mandated policies. The Association develops model policies that incorporate the Board-promulgated standards. The Association also develops other (non-mandated) model policies for its membership. Accordingly, it may be prudent to invite the Association to develop a model policy on encryption for radio transmissions. To that end, I have taken the liberty of forwarding your letter to the Board of Directors of the Association.

Sincerely,



BRIAN MACMASTER
Chair
Board of Trustees

Hon. David R. Hastings III, Chair
Hon. Joan M. Nass
Perry Antone
Shenna Bellows
Percy L. Brown, Jr
Michael Cianchette
Richard Flewelling
Mary Ann Lynch



A. J. Higgins
Mal Leary
William Logan
Judy Meyer
Kelly Morgan
Linda Pistner
Harry Pringle
Mike Violette

STATE OF MAINE
RIGHT TO KNOW ADVISORY COMMITTEE

November 15, 2012

Brenda Kielty
Public Access Ombudsman
Department of Attorney General
6 State House Station
Augusta, Maine 04333-0006

Dear Ms. Kielty:

Earlier this year, the Advisory Committee received a letter from Rep. Mary Nelson concerning the confidentiality of parent email addresses collected by schools. The issue arose from a request made to the Falmouth School Department for the home email addresses of all parents of students in the Falmouth school system. For Rep. Nelson and others, the request raised serious concerns about privacy for students, parents and their families. Because parent email addresses are maintained as part of student education records and are provided by parents to allow them to access other confidential student records, the Falmouth School Department believes they are confidential under the Federal Family Educational Rights and Privacy Act (FERPA). However, since the issue was not clear as a matter of State law, Rep. Nelson asked the Advisory Committee to consider whether our statutes should be clarified to protect the confidentiality of parent email addresses.

The Advisory Committee agreed to review Rep. Nelson's request and referred the issue to the Legislative Subcommittee for further consideration. The Legislative Subcommittee met 3 times to discuss the issue. Subcommittee members considered whether email addresses are confidential under federal law, whether State law should be changed and what practical problems might result from redacting email addresses from otherwise public documents. While the Subcommittee did consider draft legislation, the members were not able to make a unanimous recommendation on the proposal. As a result, the Subcommittee recommended that no changes be made in the statute, but agreed to revisit the issue after gathering information about whether the issue is a widespread concern or if this is an issue for one school system. Although we understand that Rep. Nelson may propose legislative changes to the 126th Legislature, the Advisory Committee supported the Subcommittee's recommendations. Shenna Bellows abstained from the Advisory Committee's vote because the ACLU of Maine is likely to support any legislation proposed by Rep. Nelson.

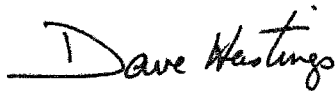
We are writing to ask if you could assist the Advisory Committee in this effort by surveying school departments throughout the State and gathering information about any complaints or

Ombudsman Letter
November 15, 2012

concerns brought to your attention related to the confidentiality of parent email addresses. We ask that you submit your findings, and any recommendations you may have, to the Advisory Committee by July 1, 2013 so we may consider them as part of our 2013 activities.

Thank you for your time and attention to this matter. Please feel free to contact staff, Peggy Reinsch or Colleen McCarthy Reid, if you have questions. They can be reached at the Office of Policy and Legal Analysis at 287-1670.

Sincerely,

A handwritten signature in black ink that reads "Dave Hastings". The signature is written in a cursive style with a large, prominent "D" at the beginning.

The Honorable David R. Hastings III
Chair, Right to Know Advisory Committee

cc. Rep. Mary Pennell Nelson

STEPHEN WAGNER

92 Forest Avenue
Portland, Maine 04101
207-664-3742
stephen.w.wagner@maine.edu

EDUCATION

University of Maine School of Law, Portland, Maine

J.D. Candidate, degree expected May 2015

- Class Rank: Top Quintile; Dean's List

College of the Atlantic, Bar Harbor, Maine

B.A., Human Ecology, 2011

- First recipient of the Partridge Foundation's Trans-Atlantic Partnership Award.
- College of the Atlantic official nominee for Moriss K. Udall Scholarship.
- Member of the Student Activities Committee; coordinated a sub-committee's charter revision.
- Founder and President of a student political group.

SELECTED WORK & VOLUNTEER EXPERIENCE

Maine Citizens for Clean Energy, Bar Harbor, Maine

Hancock County Election Day Coordinator, October - November 2011

- Organized thirty volunteers to gather signatures for a citizen initiative regarding clean energy standards in Maine.

College of the Atlantic, Bar Harbor, Maine

Researcher, Hancock County Firewood Project (half-time, National Science Foundation Grant), January - July 2011

- Explored the implications and feasibility of expanding wood-based heat in Hancock County, Maine.
- Conducted over 100 ethnographic interviews with county residents.
- Developed and authored the guiding document for the "Neighborhood Forests Initiative," an ambitious community development effort encouraging communal use of small, private woodlands.

Slow Food USA, Brooklyn, New York

Programs and Campaigns Intern, September - December 2011

- Represented the organization to coalition partners for food safety and child nutrition campaigns.
- Authored talking points, internal research documents, and press statements for U.S. Department of Agriculture/Department of Justice anti-trust hearings.
- Coordinated a series of internal 2012 farm bill research sessions.

Salt i Groten, Ytre Lygra, Norway

Volunteer, World Wide Opportunities on Organic Farms, Summer 2010

- Lived and worked full-time (50 hours per week) on an isolated organic farm specializing in vegetable production for retail and restaurants.
- Continued to work remotely for the Organic Research Centre.

Organic Research Centre, Newbury, United Kingdom

Policy Intern, March - June 2010 (and remotely, June - August, 2010)

- Researched, proposed and co-authored published articles on alternative legal scenarios for the expanded commercial use of the Research Centre's composite-cross wheat population project.
- Presented on behalf of the Trans-Atlantic Partnership to board members and donors at the Research Centre's 30th anniversary event.
- Lectured on international intellectual property rights regime and UK seed registration laws to class of visiting students from American and European universities.

Various other full and part-time positions to acquire experience and help finance education include:

carpentry assistant, winery staff, research assistant, dairy farm apprentice, political campaign organizer/coordinator, grounds crew, and food service.

Proposed ideas for discussion

1. "Abuse" of the Freedom of Access Act (FOAA);
2. Whether restrictions should be placed on requesters;
3. Whether government records containing "personal information" that is protected under 10 MRSA Chapter 210-B, *Notice of Risk to Personal Data*, also ought to be protected from public disclosure;
4. Whether the Maine Revised Statutes also ought to be reviewed at regular intervals to determine whether currently publicly accessible records ought to instead be protected from public disclosure due to personal privacy-related concerns;
5. Whether the payment in advance threshold of 1 MRSA § 408-A(10) ought to be lowered, at least in some cases;
6. As a matter of transparency, whether persons making FOA requests should be able to do so anonymously;
7. In light of the United States Supreme Court's recent decision in *McBurney v. Young*, 569 U.S. ____ (2013), whether the FOAA ought to be clarified to state that it is available for use by Maine citizens/residents as a means to access Maine, county, and municipal government records and proceedings;
8. Whether the FOAA ought to be able to be used as an additional tool of discovery when a formal adjudicatory proceedings is already pending;
9. Whether the FOAA ought to focus solely on the public accessibility of records, and not on the public accessibility of information;
10. As a matter of clarification of policy, whether the exceptions listed in the definition of "public records" are intended to be permissive or mandatory;
11. Whether the law needs to be made clearer that public employees' date of birth information is not subject to public disclosure;
12. Whether FOAA requests made for commercial purposes ought to be subject to the fee restrictions of 1 MRSA § 408-A(8);
13. Whether a formal, standardized policy ought to be developed governing the storage, retention, and disposition of government emails;
14. Whether government records containing personal information about private citizens ought to be generally protected from public disclosure;
15. The unintended, adverse impacts of the FOAA (for example, on the preservation of historical information and on the efficiency of communications in government).

RIGHT TO KNOW ADVISORY COMMITTEE

DRAFT AGENDA

October 3, 2013

1:00 p.m.

Room 126, State House, Augusta

Convene

1. Welcome and Introductions
2. Public Access Ombudsman Update - Brenda Kielty
3. Subcommittee Updates
 - Bulk Records/Public Policy Subcommittee
Chris Parr, Chair
 - Legislative Subcommittee
Judy Meyer, Chair
 - Public Records Exceptions Subcommittee
Suzanne Goucher, Chair
4. Other?
5. Schedules
 - Right to Know Advisory Committee
 - Tuesday, November 12, 2013, 1:00 p.m.
 - *Need to reschedule: Tuesday, December 10, 2013, 1:00 p.m. – to Tuesday, December 17, 2013 at 1:00 p.m.?*
 - Public Records Exceptions Subcommittee
 - Monday, November 4, 2013, 1:00 p.m.

Adjourn

Public Records Exception Subcommittee
October 3rd Report to Right to Know Advisory Committee

The Public Records Exception Subcommittee has 3 members---Suzanne Goucher, Linda Pistner and MaryAnn Lynch. The Subcommittee has met twice: September 11 and September 25. The next meeting is scheduled for November 4 at 1:00 pm.

Issues Under Consideration by the Subcommittee:

1. Title 22, section 8754, reporting of sentinel events

Report/Subcommittee recommendation: The Subcommittee agreed to table discussion of this exception to the next meeting. Members have reviewed research on other state laws prepared by the Advisory Committee's extern, Stephen Wagner, and have asked for additional about the experience of other states, like California, Florida and Minnesota, which publicly disclose information about specific sentinel events. Members have also reviewed websites and other sources of publicly reported data about the quality of health care provided by hospitals, health care facilities and health care practitioners and have requested an analysis of the types of reports required under the sentinel event reporting law to federal reporting requirements for hospitals to determine if similar information is disclosed to the public by other measures.

2. Exceptions Included in LD 420, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions:

- Title 22, sections 1696-D and 1696-F, related to the Community Right-to-Know Act
- Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor
- Title 26, section 934, relating to report of the State Board of Arbitration and Conciliation in labor dispute
- Title 29-A, section 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles
- Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system
- Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles
- Title 38, section 585-B, subsection 6, paragraph C, relating to mercury reduction plans for air emission source emitting mercury
- Title 38, section 585-C, subsection 2, relating to the hazardous air pollutant emissions inventory

Report/Subcommittee recommendation: The Subcommittee voted 3-0 to recommend that the provisions included in LD 420 to amend these public records exceptions move forward as proposed in the bill (and previously approved in 2012 by the Advisory Committee). The Subcommittee also agreed to recommend that Advisory Committee write a letter to the legislative policy committees concerning the two provisions in the Community Right-to-Know Act informing the committees that the Act has never been implemented and asking the committee to consider whether to recommend repeal of the Act. The Subcommittee will review a draft letter at their next meeting.

3. Exceptions Tabled by Subcommittee in 2012 in Titles 26 through 39-A

Report/Subcommittee recommendation: The Subcommittee is charged with review of 27 exceptions tabled by the Subcommittee in 2012; the previous Subcommittee did not make any recommendation with regard to any of these exceptions.

Public Records Exception Subcommittee
October 3rd Report to Right to Know Advisory Committee

As of September 25, 2013, the Subcommittee has taken the following actions by unanimous vote.

Continued without change

Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force

Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force

Title 32, section 2599, relating to medical staff reviews and hospital reviews – osteopathic physicians

Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees

Title 32, section 13006, relating to real estate grievance and professional standards committees hearings

Title 32, section 16607, subsection 2, relating to records obtained or filed under the Maine Securities Act

Title 34-A, section 5210, subsection 4, relating to the State Parole Board report to the Governor

Title 35-A, section 1311-B, subsections 1, 2 and 4, relating to public utility technical operations information

Title 35-A, section 1316-A, relating to Public Utilities Commission communications concerning utility violations

Title 35-A, section 9207, subsection 1, relating to information about communications service providers

Title 36, section 575-A, subsection 2, relating to forest management and harvest plan provided to Bureau of Forestry and information collected for compliance assessment for Tree Growth Tax Law

Title 36, section 579, relating to the Maine Tree Growth Tax Law concerning forest management plans

Title 37-B, section 797, subsection 7, relating to Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency reports of hazardous substance transportation routes

Amend, but approval of draft language pending

Title 35-A, section 8703, subsection 5, relating to telecommunications relay service communications

Public Records Exception Subcommittee
October 3rd Report to Right to Know Advisory Committee

Continue without change but will review in 2014

Title 36, section 1106-A, subsection 3, paragraph D, relating to forest management and harvest plan made available for Farm and Open Space Tax Law

Tabled; no action taken

Title 28-A, section 755, relating to liquor licensees' business and financial records

Title 37-B, section 708, subsection 3, relating to documents collected or produced by the Homeland Security Advisory Council

Title 38, section 414, subsection 6, relating to records and reports obtained by the Board of Environmental Protection in water pollution control license application procedures

Title 38, section 470-D, relating to individual water withdrawal reports

No discussion by Subcommittee yet

Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans

Title 38, section 1610, subsection 6-A, paragraph F, relating to annual sales data on the number and type of computer monitors and televisions sold by the manufacturer in this State over the previous 5 years

Title 38, section 1661-A, subsection 4, relating to information submitted to the Department of Environmental Protection concerning mercury-added products

Title 38, section 2307-A, subsections 1 and 5, relating to information submitted to the Department of Environmental Protection concerning toxics use and hazardous waste reduction

Title 39-A, section 153, subsection 9, relating to the Workers' Compensation Board audit working papers

Title 39-A, section 355-B, subsection 11, relating to records and proceedings of the Workers' Compensation Supplemental Benefits Oversight Committee concerning individual claims

Title 39-A, section 403, subsection 3, relating to workers' compensation self-insurers proof of solvency and financial ability to pay

Title 39-A, section 403, subsection 15, relating to records of workers' compensation self-insurers

Title 39-A, section 409, relating to workers' compensation information filed by insurers concerning the assessment for expenses of administering self-insurers' workers' compensation program

RIGHT TO KNOW ADVISORY COMMITTEE

DRAFT AGENDA

November 12, 2013

1:00 p.m.

Room 438, State House, Augusta

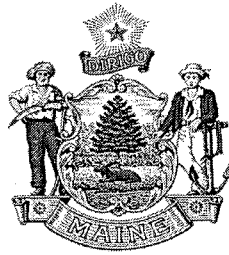
Convene

1. Welcome and Introductions
2. Public Access Ombudsman Update - Brenda Kielty
3. Subcommittee Updates
 - Public Policy Subcommittee and Legislative Subcommittee
Chris Parr, Chair
Judy Meyer, Chair
 - Public Records Exceptions Subcommittee
Suzanne Goucher, Chair
4. Draft Annual Report - outline
5. Additional issues, questions
6. Schedules
 - Right to Know Advisory Committee
 - Tuesday, December 17, 2013 at 1:00 p.m.

Adjourn

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Hon. Linda M. Valentino, Chair
Hon. Kimberly Monaghan-Derrig
Perry Antone
Percy L. Brown, Jr
Richard Flewelling
James T. Glessner
Suzanne Goucher
Frederick Hastings
Mary Ann Lynch



Mal Leary
William Logan
Judy Meyer
Kelly Morgan
Christopher Parr
Linda Pistner
Harry Pringle
Luke Rossignol

STATE OF MAINE
RIGHT TO KNOW ADVISORY COMMITTEE

November 12, 2013

Senator John L. Tuttle, Jr., Senate Chair
Representative Louis J. Luchini, House Chair
Joint Standing Committee on Veterans and Legal Affairs
100 State House Station
Augusta, Maine 04333

Dear Sen. Tuttle and Rep. Luchini:

The Right to Know Advisory Committee is tasked with reviewing existing public records exceptions in the statutes, and in the past two years has focused on the exceptions found in Titles 26 through 39-A. The Advisory Committee is expected to review and evaluate each public records exception and make a recommendation for keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation. The Advisory Committee has established the Public Records Exception Subcommittee to conduct these reviews.

As part of its review, the Public Records Exception Subcommittee considered an exception in Title 28-A, section 755 related to the business and financial records of liquor licensees. During the 125th Legislature, we understand that the 125th Legislature transferred statutory responsibility for collecting data from on-premise liquor licenses from the Department of Public Safety to the Bureau of Alcoholic Beverages and Lottery Operations (BABLO). At the Subcommittee's request, BABLO completed a survey about section 755 and provided input about the application and potential impact of the confidentiality exception. We attach that information for your review.

While BABLO has not yet instituted a system or process to collect data for liquor licensees, they expressed interest in gathering data from on-premise licensees for marketing purposes to help the State better manage the sale and distribution of spirits throughout the State. However, BABLO also indicated that stakeholders representing licensees raised concerns that the confidentiality provision in section 755 may impact their ability to collect that data. BABLO suggested that the Subcommittee consider making statutory changes to clarify section 755 to enable the agency to collect certain information from licensees, but otherwise maintain the confidentiality of licensees' business and financial records while in the possession of the licensee.

Because the suggestion raised other policy and legal issues that go beyond the confidentiality exception, the Subcommittee is reluctant to move ahead without legislative input.

VLA Letter
Page Two
11/12/13

We understand that your committee may be considering legislation in the Second Regular Session to further clarify BABLO's statutory responsibilities for liquor enforcement. As part of that review, we hope that your committee will consider the confidentiality exception and consult with BABLO and other interested parties to determine whether statutory changes should be recommended to Title 28-A, section 755.

Thank you for your time and attention to this matter. Please feel free to contact staff, Peggy Reinsch or Colleen McCarthy Reid, if you have questions. They can be reached at the Office of Policy and Legal Analysis at 287-1670.

Sincerely,

Sen. Linda Valentino, Chair
Right to Know Advisory Committee



**STATE OF MAINE
126TH LEGISLATURE**

**Eighth Annual Report
of the
RIGHT TO KNOW ADVISORY COMMITTEE**

January 2014

Members:

**Sen. Linda M. Valentino
Rep. Kimberly Monaghan-Derrig
Perry Antone Sr.
Percy Brown Jr.
Richard Flewelling
Suzanne Goucher
Frederick Hastings
Mal Leary
William Logan
Mary Ann Lynch
Judy Meyer
Christopher Parr
Linda Pistner
Harry Pringle
Luke Rossignol**

Staff:

**Henry Fouts, Legislative Analyst
Colleen McCarthy Reid, Legislative Analyst
Margaret J. Reinsch, Senior Analyst
Office of Policy & Legal Analysis
13 State House Station
Room 215 Cross State Office Building
Augusta, ME 04333-0013
Telephone (207) 287-1670
Fax (207) 287-1275
www.maine.gov/legis/opla
<http://www.maine.gov/legis/opla/righttoknow.htm>**

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IV. Right to Know Advisory Committee Subcommittees	4
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Appendices

- A. Authorizing legislation, 1 MRSA § 411
- B. Membership list, Right to Know Advisory Committee
- C. Recommended Draft Legislation for statutory changes to public records exceptions (Title 22, Sections 1696-D and 1696-F and public records exceptions in Titles 26 - 39-A)
- D. Correspondence
- E. Recommended Draft Legislation:
- F. Recommended Draft Legislation:
- G.

EXECUTIVE SUMMARY

This is the eighth 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 16 members are appointed by the Governor, the Chief Justice, 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: <http://www.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 2013, the Advisory Committee met on July 24, October 3, November 12, and December 17. The Advisory Committee established the Legislative Subcommittee, the Public Policy Subcommittee and the Public Records Exceptions Subcommittee to assist it in conducting its work. All three subcommittees held meetings and made recommendations to the Advisory Committee.

The Advisory Committee was very fortunate to have the services of a Legal Extern of the Maine School of Law. Stephen Wagner, currently a second year student at the Law School, worked with the Advisory Committee during the first semester of the 2013-2014 school year.

As in previous annual reports, this report includes a brief summary of the legislative actions taken in response to the Advisory Committee's January 2013 recommendations and a summary of relevant Maine court decisions from 2013 on the freedom of access laws.

For its eighth annual report, the Advisory Committee makes the following recommendations, although not all the recommendations are unanimous:

{to be added}

In 2014, the Right to Know Advisory Committee will continue to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access and the recommendations of the Advisory Committee for existing public records exceptions in Titles 26 through 39-A.

The Advisory Committee looks forward to a full year of activities and working with the Public Access Ombudsman, the Governor, the Legislature and the Chief Justice of the Maine Supreme Judicial Court to implement the recommendations contained in its seventh annual report.

I. INTRODUCTION

This is the eighth 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. Title 1, section 411 is included as Appendix A. Previous annual reports of the Advisory Committee can be found on the Advisory Committee's webpage at www.maine.gov/legis/opla/righttoknowreports.htm.

The Right to Know Advisory Committee has 16 members. The chair of the Advisory Committee is elected annually by the members. The Advisory Committee members are:

Sen. Linda M. Valentino Chair	<i>Senate member of Judiciary Committee, appointed by the President of the Senate</i>
Rep. Kimberly Monaghan-Derrig	<i>House member of Judiciary Committee, appointed by the Speaker of the House</i>
Perry Antone Sr.	<i>Representing law enforcement interests, appointed by the President of the Senate</i>
Percy Brown Jr.	<i>Representing county or regional interests, appointed by the President of the Senate</i>
Richard Flewelling	<i>Representing municipal interests, appointed by the Governor</i>
Suzanne Goucher	<i>Representing broadcasting interests, appointed by the Speaker of the House</i>
Frederick Hastings	<i>Representing newspapers and other press interests, appointed by the President of the Senate</i>
Mal Leary	<i>Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House</i>
William Logan	<i>Representing the public, appointed by the Speaker of the House</i>
Mary Ann Lynch	<i>Member of the Judicial Branch</i>
Judy Meyer	<i>Representing newspaper interests, appointed by the Speaker of the House</i>
Christopher Parr	<i>Representing state government interests, appointed by the Governor</i>

Linda Pistner *Attorney General's designee*

Harry Pringle *Representing school interests, appointed by the Governor*

Luke Rossignol *Representing the public, appointed by the President of the Senate*

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

II. RIGHT TO KNOW ADVISORY 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, publicize the needs of 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 be able to work with the newly-appointed Public Access Ombudsman, former Special Assistant Attorney General 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 2013, the Advisory Committee met on July 24, October 3, November 12, and December 17. The Advisory Committee established the Legislative Subcommittee, the Public Policy Subcommittee and the Public Records Exceptions Subcommittee to assist it in conducting its work. All of the full committee meetings and subcommittee meetings were held in the Judiciary Committee Room of the State House in Augusta and open to the public. Each meeting 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 www.maine.gov/legis/opla/righttoknow.htm. Agendas, meeting materials and summaries of the meetings are included 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 the developments in case law relating to Maine's freedom of access laws. The Advisory Committee identified the following court decisions summarized below.

{to be added}

IV. RIGHT TO KNOW ADVISORY COMMITTEE SUBCOMMITTEES

Given the broad scope of the Advisory Committee's ongoing duties and responsibilities and the nature of the requests received from the Legislature, the Advisory Committee reorganized its subcommittee structure in 2013. Three subcommittees were appointed: 1) Legislative; 2) Public Policy; and 3) Public Records Exceptions. Senator Valentino and Representative Monaghan-Derrig, the legislative members of the Advisory Committee, are ex officio members of each subcommittee.

Legislative Subcommittee. The Legislative Subcommittee's focus is to serve as an advisor to the Legislature when legislation affecting public access is proposed and to respond to requests from the Legislature or others to consider issues affecting public records and public access. Judy Meyer serves as chair of the Subcommittee and the following serve as members: Percy Brown, Richard Flewelling, Suzanne Goucher, Mal Leary, William Logan, Chris Parr, Harry Pringle and Luke Rossignol.

During 2013, the Legislative Subcommittee had __ meetings and discussed the following issues. Because of the similarities in the issues being discussed as well as an overlap of members, the Legislative Subcommittee met jointly with the Public Policy Subcommittee on __ occasions.

{to be added}

See discussion of Advisory Committee recommendations in Section VI.

Public Policy Subcommittee. The Public Policy Subcommittee was formerly known as the Bulk Records Subcommittee. The Subcommittee changed its name to reflect the breadth of the issues under discussion. Chris Parr is the chair of the Subcommittee and the following serve as members: Percy Brown, Fred Hastings, Judy Meyer, Linda Pistner and Harry Pringle.

During 2013, the Public Policy Subcommittee held __ meetings and discussed the following issues. Because of the similarities in the issues being discussed as well as an overlap of members, the Public Policy Subcommittee met jointly with the Legislative Subcommittee on __ occasions.

{to be added}

See discussion of Advisory Committee's recommendations in Section VI.

Public Records Exceptions Subcommittee. The Public Records Exception Subcommittee's focus is to participate in the review and evaluation of public records exceptions, both existing and those proposed in new legislation; to examine inconsistencies in statutory language and to propose clarifying standard language. Suzanne Goucher is the chair of the Subcommittee and Mary Ann Lynch and Linda Pistner serve as members.

During 2013, the Public Records Exception Subcommittee held __ meetings: _____. The Subcommittee discussed the following exceptions.

Title 22, section 8754, reporting of sentinel events

{to be added}

Title 22, sections 1696-D and 1696-F, related to the Community Right-to-Know Act

{to be added}

Review of Existing Exceptions –Titles 26 through 39-A

During 2013, the Public Records Exception Subcommittee reviewed __ existing public records exceptions found in Titles 26 through 39-A. The subcommittee completed review of __ existing public records exceptions, and tabled __ exceptions for continued analysis and discussion in 2014. In its review, the Subcommittee sought input from the State agencies responsible for administering the public records exceptions and a number of interested parties affected by specific exceptions, including the Department of Health and Human Services, the Bureau of Insurance within the Department of Professional and Financial Regulation, the Bureau of Alcoholic Beverages and Lottery Operations, the Department of Corrections, the Public Utilities Commission, the Maine Emergency Management Agency, the Department of Environmental Protection, the Board of Environmental Protection and the Maine Geological Survey.

See discussion of Advisory Committee's recommendations in Section VI.

V. ACTIONS RELATED TO RIGHT TO KNOW ADVISORY COMMITTEE RECOMMENDATIONS CONTAINED IN SEVENTH ANNUAL REPORT

The Right to Know Advisory Committee made several recommendations in its seventh annual report. The actions taken in 2013 as a result of those recommendations are summarized below.

<p>Recommendation: Continue without modification, amend and repeal the specified existing public records exceptions in Titles 26 through 39-A</p>	<p>Action: The Judiciary Committee voted "Ought Not to Pass" on the recommendations of the Advisory Committee with regard to specific public records exceptions as proposed in <i>LD 420, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions</i>. The Advisory Committee referred the provisions addressed in LD 420 back to the Public Records Subcommittee for additional action and recommendation. <i>See discussion of Public Records Subcommittee actions in Section IV and discussion of Advisory Committee's recommendations in Section VI.</i></p>
<p>Recommendation: Communicate to the Department of Health and Human Services about repealing two programs never implemented</p>	<p>Action: The Advisory Committee sent a letter on November 15, 2012 to the Commissioner of Health and Human Services.</p>
<p>Recommendation: Amend the Community Right-to- Know Act to provide for more public access to information about hazardous</p>	<p>Action: The Judiciary Committee voted "Ought Not to Pass" on the recommendations of the Advisory Committee with regard to specific public records exceptions as proposed in <i>LD 420, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions</i>.</p>

<p>substances</p>	<p>The Advisory Committee referred the provision amending the Community Right-to-Know Act back to the Public Records Exceptions Subcommittee for additional action and recommendation. The Subcommittee recommended repeal of the Act. <i>See discussion of Public Records Exceptions Subcommittee actions in Section IV and discussion of Advisory Committee's recommendations in Section VI.</i></p>
<p>Recommendation: Continue discussion and consideration of the confidentiality provision in the sentinel events reporting law</p>	<p>Action: The Advisory Committee referred the issue to the Public Records Exceptions Subcommittee. The Subcommittee reviewed the confidentiality provision in the sentinel events reporting law. <i>See discussion of Public Records Exceptions Subcommittee actions in Section IV and discussion of Advisory Committee's recommendations in Section VI.</i></p>
<p>Recommendation: Make no changes to the law regarding the encryption of radio transmissions from police and first responders</p>	<p>Action: No action was taken.</p>
<p>Recommendation: Request that the Board of Trustees of the Maine Criminal Justice Academy consider creating a model encryption policy for consideration by local law enforcement agencies that reflects the current practices, and request that the board report back to the Advisory Committee on any decisions or actions taken pursuant to the request</p>	<p>Action: The Advisory Committee sent a letter on November 15, 2012 to the Board of Trustees of the Maine Criminal Justice Academy. On December 6, 2012, the Board of Trustees responded to say that the Board does not formulate model policies for law enforcement and suggested that the Advisory Committee consider inviting the Maine Chiefs of Police Association to develop a model policy. In July 2013, the Advisory Committee referred the issue back to the Legislative Subcommittee. <i>See discussion of Legislative Subcommittee actions in Section IV and discussion of Advisory Committee's recommendations in Section VI.</i></p>
<p>Recommendation: Request that the Public Access Ombudsman look at the confidentiality of email addresses collected by schools and municipalities and report</p>	<p>Action: The Legislature enacted Public Law 2013, chapter 339 (LD 104, An Act to Amend the Laws Governing Public Records). The law excludes email addresses obtained by political subdivisions of the State for the sole purpose of disseminating notices from the political subdivision or its elected officers from the definition of a "public record". In</p>

<p>back to the Advisory Committee</p>	<p>addition, the Public Access Ombudsman conducted a survey of school districts in the State and reported back to the Advisory Committee in October 2013. The Ombudsman reported that only one school district had received a request for email addresses of parents of students.</p>
<p>Recommendation: Make no changes to the application of the Freedom of Access laws to the Maine Public Broadcasting Corporation</p>	<p>Action: No action was taken.</p>
<p>Recommendation: Provide guidance through updates to the Frequently Asked Questions webpage and training for legislators with regard to the storage, management and retrieval of public officials' communications, including email</p>	<p>Action: The Frequently Asked Questions webpage was updated as recommended by the Advisory Committee. In December 2012, the training for legislators was updated to incorporate guidance on the storage, management and retrieval of public officials' communications, including email.</p>
<p>Recommendation: Make available to agencies and legislative drafters templates for drafting specific confidentiality statutes</p>	<p>Action: At the request of the Advisory Committee, the templates were distributed to agency and legislative drafters.</p>
<p>Recommendation: Make no additional modifications to the Freedom of Access Act concerning bulk requests or bulk transfers of public records, with the understanding that concerns about bulk requests and bulk data transfers will most likely be revisited in the future (divided report)</p>	<p>Action: No action was taken.</p>

<p>Recommendation: Enact legislation authorizing the use of technology to permit remote participation in public meetings (divided report)</p>	<p>Action: The Judiciary Committee voted “Ought Not to Pass” on the recommendations of the Advisory Committee with regard to remote participation in meetings as proposed in <i>LD 258, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies</i>. The Judiciary Committee requested that the Advisory Committee continue its work related to LD 258, making sure to include in the discussion public bodies that meet through the use of telephone or video links even if their authorizing statutes are silent on the procedure. The Advisory Committee referred the provisions addressed in LD 258 back to the Legislative Subcommittee for additional action and recommendation. <i>See discussion of Legislative Subcommittee actions in Section IV and discussion of Advisory Committee’s recommendations in Section VI.</i></p>
<p>Recommendation: Enact legislation requiring the Department of Transportation to give public notice at least 30 days prior to submitting a bill to the Legislature that authorizes an agreement implementing a public-private partnership for a transportation project (divided report)</p>	<p>Action: LD 217, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Access to Records Relating to Public-private Partnerships, was not enacted. Instead, the Legislature enacted Public Law 2013, Chapter 208 (LD 721, An To Provide Transparency in Public-private Partnerships for Transportation Projects), which was considered by the Transportation Committee and addressed the same concern.</p>

VI. RECOMMENDATIONS

During 2013, the Advisory Committee engaged in the following activities and makes the recommendations summarized below.

{to be added}

VII. FUTURE PLANS

In 2014, the Right to Know Advisory Committee will continue to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access and the recommendations of the Advisory Committee for existing public records exceptions in Titles 26 through 39-A. The Advisory Committee looks forward to a full year of activities working with the Public Access Ombudsman, the Judiciary and the Legislature to implement the recommendations included in this report.