

RIGHT TO KNOW ADVISORY COMMITTEE

DRAFT AGENDA

July 15, 2011

9:00 a.m.

Room 438, State House, Augusta

Convene

1. Welcome and Introductions
Senator David R. Hastings III
Representative Joan M. Nass
2. Election of Chair pursuant to 1 MRSA §411, sub-§ 4
3. Summary of First Regular Session, 125th Legislature's FOA actions in 2011
 - RTK AC recommendations
 - LD 1082, An Act Concerning the Protection of Personal Information in Communications with Elected Officials (Public Law 2011, chapter 264)
 - LD 1154, An Act To Implement the Recommendations of the Right To Know Advisory Committee (Public Law 2011, chapter 320)
 - Proposed public records exceptions
4. Existing exceptions review process (Titles 22 - 25, recommendations due January 2012)
5. Requests from Legislature: Memo from Judiciary Committee
 - PL c. 264: email and other communications of elected/public officials
 - Availability of personal information in public records; Privacy Act? (LD 917)
 - LD 1465, An Act To Amend the Laws Governing Freedom of Access (carryover)
 - Accessibility and provision of public information in large quantities (see also c. 390 and c. 299)
6. Continuing projects
 - Criminal History Record Information Act (CHRIA) - working with CLAC
 - Use of technology in public proceedings (member participation from remote locations)
 - Bulk electronic data
 - Training and education for public officials - expansion to include appointed, others?
7. Law School Externship - update
8. Subcommittees: chairs, members, duties
9. Scheduling future meetings, subcommittee meetings
10. Other?

Adjourn

JUN 08 '11 264

STATE OF MAINE

BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 817 - L.D. 1082

**An Act Concerning the Protection of Personal Information in
Communications with Elected Officials**

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

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

C-1. Information contained in a communication between a constituent and an elected official if the information:

(1) Is of a personal nature, consisting of:

(a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(b) Credit or financial information;

(c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;

(d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or

(e) An individual's social security number; or

(2) Would be confidential if it were in the possession of another public agency or official;

Sec. 2. Right To Know Advisory Committee. The Right To Know Advisory Committee, as established in the Maine Revised Statutes, Title 1, section 411, subsection 1, shall examine the benefit of public disclosure of elected officials' e-mails and other records balanced with the availability of technology and other systems necessary to maintain the records and to provide public access. The Right To Know Advisory Committee's findings and any recommendations must be included in its 2012 annual report pursuant to Title 1, section 411, subsection 10.

JUN 13 '11 320

STATE OF MAINE

BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 852 - L.D. 1154

An Act To Implement the Recommendations of the Right To Know Advisory Committee

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.

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

PART A

Sec. A-1. 22 MRSA §1065, as enacted by PL 2005, c. 628, §1, is repealed.

Sec. A-2. 24 MRSA §2329, sub-§8, as enacted by PL 1983, c. 527, §1, is amended to read:

8. Confidentiality. ~~The confidentiality of all alcoholism~~ Alcoholism and drug treatment patient records ~~shall be protected~~ are confidential.

Sec. A-3. 24-A MRSA §225, sub-§3, as enacted by PL 1991, c. 828, §10, is amended to read:

3. All working papers, recorded information, documents and copies of any of these media produced by, obtained by or disclosed to the superintendent or any other person in the course of an examination made under this chapter ~~must be given~~ are confidential treatment, are not subject to subpoena and may not be made public by the superintendent or any other person, except to the extent provided in sections 226 and 227. Access may be granted to the National Association of Insurance Commissioners. Any parties granted access must agree in writing prior to receiving the information to provide the information with the same confidential treatment as required by this section unless prior written consent of the insurer to which the information pertains has been obtained.

Sec. A-4. 24-A MRSA §226, sub-§2, as amended by PL 1999, c. 113, §15, is further amended to read:

2. If requested by the person examined, within the period allowed under subsection 1, or if determined advisable by the superintendent without such request, the superintendent shall hold a hearing relative to the report and may not file the report in the bureau until after the hearing and the superintendent's order on the report; except that the superintendent may furnish a copy of the report to the Governor, Attorney General or Treasurer of State pending final decision and, if the copies are so furnished, they are ~~deemed confidential information~~ until the other requirements of this section with regard to examination reports have been satisfied. In lieu of convening a hearing, the superintendent may reopen the examination or, if supported by the information obtained, may adopt some or all of the modifications proposed by the person examined.

Sec. A-5. 24-A MRSA §227, as amended by PL 1991, c. 828, §12, is further amended to read:

§227. Examination report

The report of examination of those persons, partnerships, corporations or other business associations that are subject to examination by the superintendent as provided for in sections 221 and 222 ~~shall~~ must, upon satisfaction of the requirements of section 226 and so long as no court of competent jurisdiction has stayed its publication, be filed in the bureau as a public record, except ~~for that~~ any information relating to an individual insured or individual applicant for insurance, ~~which is deemed confidential~~.

Sec. A-6. 24-A MRSA §952-A, sub-§4, ¶H, as repealed and replaced by PL 2001, c. 89, §1, is amended to read:

H. Except as provided in paragraphs K, L and M, any memorandum in support of the opinion and any other documents, materials or other information provided by the insurer to the superintendent in connection with the memorandum are confidential, must be kept confidential by the superintendent ~~and are not public records within the meaning of the freedom of access laws~~ and are not subject to subpoena or discovery, nor admissible in evidence in any private civil action. The superintendent is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the superintendent's official duties.

Sec. A-7. 24-A MRSA §2315, as amended by PL 1989, c. 797, §17 and affected by §§37 and 38, is repealed.

Sec. A-8. 24-A MRSA §2323, sub-§4, as amended by PL 1989, c. 797, §27 and affected by §§37 and 38, is further amended to read:

4. Each insurer shall report its loss or expense experience to the lawful rating organization, advisory organization or agency of which it is a member or subscriber, but ~~shall is~~ is not be required to report its loss or expense experience to any rating organization, advisory organization or agency of which it is not a member or subscriber. Any insurer not reporting such experience to a rating organization, advisory organization or other agency may be required to report such experience to the superintendent. Any report of such experience of any insurer filed with the superintendent ~~shall be deemed is~~ is

confidential and ~~shall~~ may not be revealed by the superintendent to any other insurer or other person, but the superintendent may make compilations including such experience.

Sec. A-9. 24-A MRSA §2325-B, sub-§9, as enacted by PL 2003, c. 671, Pt. B, §2, is amended to read:

9. Modified policy form and rate filings. A modified policy form and modified rate developed by a member insurer must be filed with the superintendent. A modified rate to be used in connection with an existing policy form that consists solely of a permissible surcharge not in excess of the maximum allowable cap contained in rules adopted under subsection 8 may be used by a member insurer immediately upon filing that modified rate with the superintendent. For any other modified filings, a modified policy form and modified rate must be filed with the superintendent not less than 30 days in advance of the stated effective date. A modified rate filing subject to the 30-day advance filing requirement must include any supplementary rating information to be used in conjunction with a rate and, to the extent available, sufficient supporting information to support a rate. A modified rate may not be excessive, inadequate or unfairly discriminatory with respect to risks written through the program. A modified policy form may only be disapproved for the grounds specified in section 2413. All modified policy form and rate filings are confidential until ~~effective or~~ approved in accordance with applicable law.

Sec. A-10. 24-A MRSA §2842, sub-§8, as enacted by PL 1983, c. 527, §2, is amended to read:

8. Confidentiality. ~~The confidentiality of all alcoholism~~ Alcoholism and drug treatment patient records ~~shall be protected~~ are confidential.

PART B

Sec. B-1. 1 MRSA §401, as repealed and replaced by PL 1975, c. 758, is amended by adding after the first paragraph a new paragraph to read:

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.

PART C

Sec. C-1. 1 MRSA §403, as amended by PL 2009, c. 240, §1, is repealed and the following enacted in its place:

§403. Meetings to be open to public; record of meetings

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.

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 inspection. At a minimum, the record must include:

- A. The date, time and place of the public proceeding;
- B. The members of the body holding the public proceeding recorded as either present or absent; and
- C. All motions and votes taken, by individual member, if there is a roll call.

3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.

4. Maintenance of record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.

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.

6. Advisory bodies exempt from record requirements. Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.

PART D

Sec. D-1. 1 MRSA §432, sub-§1, as amended by PL 2005, c. 631, §3, is further amended to read:

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.

Sec. D-2. 1 MRSA §432, sub-§2-C is enacted to read:

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.

Sec. D-3. 1 MRSA §434, as amended by PL 2005, c. 631, §6, is further amended to read:

§434. Review of proposed exceptions to public records; accessibility of 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 ~~subsection~~ subsections 2 and 2-B have been completed.

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 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.

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.

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.

Sec. D-4. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 1, chapter 13, subchapter 1-A, in the subchapter headnote, the words "exceptions to public records" are amended to read "public records exceptions and accessibility" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

PART E

Sec. E-1. 1 MRSA §402, sub-§3, ¶N, as amended by PL 2009, c. 176, §1 and c. 339, §1, is further amended to read:

N. Social security numbers ~~in the possession of the Department of Inland Fisheries and Wildlife;~~

FOA REVIEWS 2011
 UPDATED 7/12/2011 9:18 AM

| LD | Committee | ID Letter | Request | Review | Report | Public Law chapter. |
|--|--|-----------|---|-------------------|----------------------------|---------------------|
| LD 398, An Act to Require Criminal History Record Information for Licensure of Nurses | Labor, Commerce, Research and Economic Development | 4/5/2011 | 6/1/11 divided | 6/1/11 | 6/1/11 OK | VETOED |
| LD 472, An Act to Enhance the Security of Hospital Patients, Visitors and Employees | Health and Human Services | 4/5/2011 | Amended - no review necessary | --- | | PL c. 254 |
| LD 609, An Act To Declare Certain Records of the Maine Commission on Indigent Legal Services Confidential | Judiciary | | | 5/11/11 | Recommend changes | PL c. 260 |
| LD 634, An Act to Allow a Person to Designate Information Submitted for a Hunting or Fishing License as Confidential | Inland Fisheries and Wildlife | 4/5/2011 | 4/11/11 | 5/5/11 5/11/11 | 5/12/11 OK | PL c. 185 |
| LD 652, An Act To Amend Animal Welfare Laws | Agriculture, Conservation and Forestry | | 3/28/11 | 5/4/11 | 5/10/11 OK | PL c. 210 |
| LD 654, An Act to Amend the Occupational Disease Reporting Laws | Health and Human Services | 4/5/2011 | OTP Not a new public records exception | --- | | PL c. 337 |
| LD 887, An Act to Include Medicinal Marijuana Patients in the Controlled Substances Prescription Monitoring Program | Health and Human Services | 4/5/2011 | Amended - no review necessary Divided Maj: ONTP | --- | | ONTP |
| LD 892, An Act to Establish an Insurance Fraud Division within the Department of Professional and Financial Regulation, Bureau of Insurance | Insurance and Financial Services | 4/5/2011 | Divided Maj: ONTP | 5/11/11 | 5/12/11 OK | ONTP |
| LD 917, An Act To Protect Licensing Information Provided to the Department of Inland Fisheries and Wildlife and To Require a Review of Public Access to Other Personal Information | Judiciary | | ONTP | --- | | ONTP |
| LD 958, An Act To Restore Equity in Education Funding | Education and Cultural Affairs | Com Amend | | 6/8/11 | 6/8/11 Recommend changes | recommitted |
| LD 1068, An Act to Protect the Privacy of Maine Residents under the Driver's License Laws | Transportation | 4/5/2011 | | 5/11/11 | 5/11/11 OK | PL c. 149 |
| LD 1082, An Act Concerning the Protection of Personal Information in Communications with Elected Officials | Judiciary | | | 5/11/11 | OK, but Recommend to RTKAC | PL c. 264 |
| LD 1150, An Act to Improve the Administration of the Legislative Ethics Laws | Veterans' and Legal Affairs | 4/5/2011 | Not a new public records exception | --- | | recommitted |

FOA REVIEWS 2011

UPDATED 7/12/2011 9:18 AM

| LD | Committee | ID Letter | Request | Review | Report | Public Law chapter. |
|---|--|-----------|------------------------------------|---------|------------------------------------|--------------------------|
| LD 1167, An Act to Protect the Privacy of Persons Involved in Reportable Motor Vehicle Accidents | Transportation | 4/26/2011 | | 5/11/11 | 5/11/11 Recommend changes | PL c. 390 |
| LD 1260, An Act to Improve Transparency in Maine Government | Veterans' and Legal Affairs | 4/5/2011 | Not a public records exception | --- | | ONTP |
| LD 1296, An Act to Amend the Maine Medical Use of Marijuana Act to Protect Patient Privacy | Health and Human Services | 4/5/2011 | Not a new public records exception | --- | | PL c. 407 |
| LD 1313, An Act To Amend the Motor Vehicle Laws | Transportation | 4/5/2011 | | 5/11/11 | 5/11/11 Recommend changes Ok | PL c. 356 (E) 6/15/11 |
| LD 1310, An Act To Amend the Laws Governing the Address Confidentiality Program | Judiciary | | | 5/11/11 | | PL c. 195 |
| LD 1317, An Act Concerning Sex Offender Registry Information | Criminal Justice and Public Safety | 4/5/2011 | 5/31/11OTPA | 5/31/11 | 6/1/11 Recommend change | PL c. 299 |
| LD 1319, An Act to Prohibit the Unwarranted Collection of Identifying Data of Motor Vehicles | Transportation | 4/5/2011 | ONTP | --- | | ONTP |
| LD 1337, An Act to Ensure Patient Privacy and Control with Regard to Health Information Exchanges | Health and Human Services | 4/26/2011 | | 5/12/11 | 5/12/11 OK | PL c. 373 |
| LD 1412, An Act To Promote the Proper Disposal of Used Medical Sharps | Environment and Natural Resources | 5/10/11 | carryover | --- | | carryover |
| LD 1433, An Act to Provide for the Recycling or Proper Disposal of Architectural Paint | Environment and Natural Resources | 4/26/2011 | ONTP | --- | | ONTP |
| LD 1450, An Act To Enforce Wage Laws | Labor, Commerce, Research and Economic Development | 4/26/2011 | ONTP | --- | | ONTP |
| LD 1453, An Act to Legalize and Tax Marijuana | Criminal Justice and Public Safety | 4/26/2011 | Divided Maj ONTP | --- | | ONTP |
| LD 1472, An Act to Create the State Advanced Practice Registered Nursing Board | Labor, Commerce, Research and Economic Development | 4/26/2011 | Divided ONTP | | | ONTP |
| LD 1487, An Act To Assist Maine Pharmacies | Health and Human Services | 5/4/2011 | ONTP | --- | | ONTP |
| LD 1489, An Act Regarding Regulation of Emergency Medical Services | Criminal Justice and Public Safety | 4/26/2011 | 5/31/11 OTPA | 5/31/11 | 6/1/11 OK | PL c. 271 |
| LD 1498, An Act to Phase Out Dirigo Health and Establish the Maine Health Benefit Exchange for Small Businesses and Individuals | Insurance and Financial Services | 4/26/2011 | carryover | --- | | carryover |
| LD 1500, An Act to Establish Positive Reentry Parole | Criminal Justice and Public Safety | 4/26/2011 | ONTP | --- | | ONTP |

FOA REVIEWS 2011

UPDATED 7/12/2011 9:18 AM

| LD | Committee | ID Letter | Request | Review | Report | Public Law chapter. |
|--|--------------------------------------|-----------|--------------------------------|---------|------------------------------|---------------------|
| LD 1516, An Act to Protect Consumer Information at the Efficiency Maine Trust | Energy, Utilities and Technology | 4/26/2011 | 5/17/11 | 5/17/11 | 5/17/11 Recommend change | PL c. 343 |
| LD 1521, An Act To Amend the InformME Public Information Access Act | Energy, Utilities and Technology | 5/4/11 | 5/12/11 | 5/17/11 | 5/17/11 Recommend change | PL c. 321 |
| LD 1522, An Act to Make Technical Changes to Marine Resources Laws | Marine Resources | 5/4/2011 | Not a public records exception | --- | | PL c. 266 |
| LD 1523, An Act To Improve the Maine Clean Election Act | Veterans and Legal Affairs | 5/23/11 | carryover | --- | | carryover |
| LD 1524, An Act to Amend the Laws Relating to the Maine Public Employees Retirement System | Appropriations and Financial Affairs | 5/4/2011 | | 6/16/11 | 6/28/11 OK | PL c. 449 |
| LD 1583, An Act To Provide Oversight in Certain Negotiations | Insurance and Financial Services | | 6/14/11 | 6/14/11 | 6/14/11 Recommend changes | PL c. 451 |

G:\COMMITTEES\JUD\FOA Exception review\125th\FOA Reviews 2011.doc (7/12/2011 9:17:00 AM)

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Revised 7/12/2011 3:24 PM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/ AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|-------------|---|----------|--------------------------------|--|
| 15 | 22 | 1555-D | 1 | Title 22, section 1555-D, subsection 1, relating to lists maintained by the Attorney General of known unlicensed tobacco retailers | DHHS | 11/4: tabled | |
| 18 | 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 | DHHS | 11/4: tabled | |
| 19 | 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 | DHHS | 11/4: tabled | |
| 20 | 22 | 1711-C | 2 | Title 22, section 1711-C, subsection 2, relating to hospital records concerning health care information pertaining to an individual | DHHS | 11/4: tabled | |
| 21 | 22 | 1828 | | Title 22, section 1828, relating to Medicaid and licensing of hospitals, nursing homes and other medical facilities and entities | DHHS | 11/4: tabled | |
| 22 | 22 | 1848 | 1 | Title 22, 1848, subsection 1, relating to documents and testimony given to Attorney General under Hospital and Health Care Provider Cooperation Act | OAG | 11/4: tabled | |

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Existing Public Records Exceptions, Titles 22 - 25

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| 33 | 2706 | 4 | Title 22, section 2706, relating to prohibition on release of vital records in violation of section; recipient must have "direct and legitimate interest" or meet other criteria | DHHS | | 11/4: tabled | |
| 34 | 2706-A | 6 | Title 22, section 2706-A, subsection 6, relating to adoption contact files | DHHS | | 11/4: tabled | |
| 35 | 2769 | 4 | Title 22, section 2769, subsection 4, relating to adoption contact preference form and medical history form | DHHS | | 11/4: tabled | |
| 36 | 3022 | 8, 12, 13 | Title 22, section 3022, subsections 8, 12 and 13, relating to medical examiner information | OAG | | 11/4: tabled | |
| 37 | 3034 | 2 | Title 22, section 3034, subsection 2, relating to the Chief Medical Examiner missing persons files | OAG | | 11/4: tabled | |
| 38 | 3188 | 4 | Title 22, section 3188, subsection 4, relating to the Maine Managed Care Insurance Plan Demonstration for uninsured individuals | DHHS | | 11/4: tabled | |
| 39 | 3192 | 13 | Title 22, section 3192, subsection 13, relating to Community Health Access Program medical data | DHHS | | 11/4: tabled | |
| 44 | 4008 | 1 | Title 22, section 4008, subsection 1, relating to child protective records | DHHS | | 11/4: tabled | |

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Existing Public Records Exceptions, Titles 22 - 25

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|-------|---------|-------------|--|-----------------------|--|---|--|
| 53 | 22 | 8707 | Title 22, section 8707, relating to the Maine Health Data Organization | MHDO | <ul style="list-style-type: none"> Data release rules Only two requests, one concerned paying for the data No changes | 10/18: Table - sub-§2 no change; sub-§4 why MHCFC link? | |
| 54 | 22 | 8754 | Title 22, section 8754, relating to medical sentinel events and reporting | MHDO DHHS | | 11/4: tabled | |
| 55 | 22 | 8824 | Title 22, section 8824, subsection 2, relating to the newborn hearing program | DHHS | | 11/4: tabled | |
| 56 | 22 | 8943 | Title 22, section 8943, relating to the registry for birth defects | DHHS | | 11/4: tabled | |
| 57 | 23 | 63 | Title 23, section 63, relating to records of the right-of-way divisions of the Department of Transportation and the Maine Turnpike Authority | MTA & DOT | <ul style="list-style-type: none"> Covers two categories of records Invoked rarely Subject of two Law Court cases, one LD (not enacted) No changes | 11/4: tabled | |

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| 59 | 1980 | 2-B | Title 23, section 1980, subsection 2-B, relating to recorded images used to enforce tolls on the Maine Turnpike | MTA | <ul style="list-style-type: none"> • Violation Enforcement System; records license plates only • See 23 §1982 • No changes | 11/4: tabled | |
| 60 | 1982 | | Title 23, section 1982, relating to patrons of the Maine Turnpike | MTA | <ul style="list-style-type: none"> • Toll violation system, as well as any other records • Comes into play several times a year; never used in litigation in which MTA is a party • No changes | 11/4: tabled | |
| 61 | 4251 | 10 | Title 23, section 4251, subsection 10, relating to records in connection with public-private transportation project proposals of at least \$25,000,000 or imposing new tolls | DOT | <ul style="list-style-type: none"> • Law became effective July 12, 2010 • No experience • No changes | 11/4: tabled | |
| 62 | 8115 | | Title 23, section 8115, relating to the Northern New England Passenger Rail Authority | NNEPRA | | 11/4: tabled | |

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|-------|---------|-------------|---|--|---|--|---|
| 66 | 2510 | 1 | Title 24, section 2510, subsection 1, relating to professional competence reports under the Maine Health Security Act | BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) | BOI has no role BdLicMed: <ul style="list-style-type: none"> ▶ cited 2-3 times per year ▶ PROPOSED: clarify confidentiality applies to all patient complaints MeHospAssn: <ul style="list-style-type: none"> ▶ MHA does not administer ▶ Not aware of requests ▶ No changes BdoofDentalEx: <ul style="list-style-type: none"> ▶ No requests ▶ n/a MeMedAssn: <ul style="list-style-type: none"> ▶ MMA does not administer ▶ Don't know how frequent ▶ No changes | 9/27: table - ask medical licensing boards for input; <i>Consumers for Affordable Health Care input requested</i> 11/4: Tabled until 2011 | |

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Existing Public Records Exceptions, Titles 22 - 25

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| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/ AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|--|---|--|---|--|
| 67 | 24 | 2510-A | Title 24, section 2510-A, relating to professional competence review records under the Maine Health Security Act | BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) | BOI has no role BdLicMed: <ul style="list-style-type: none"> ▶ Cited 2-3 times per year ▶ PROPOSED: allow Bd to access peer review reports MeHospAssn: <ul style="list-style-type: none"> ▶ Not aware of requests ▶ No changes BdofDentalEx: <ul style="list-style-type: none"> ▶ No requests ▶ n/a MeMedAssn: <ul style="list-style-type: none"> ▶ substantial experience not held by public entities so not subject to FOA ▶ no changes | 9/27: table - ask medical licensing boards for input 11/4: tabled until 2011 | |

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Revised 7/12/2011 3:24 PM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|--|--|--|---|---|
| 68 | 2604 | | Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act | BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) | BOI has no role BdLicMed: <ul style="list-style-type: none"> ▶ 100-200 times per year ▶ No recommendation (other states allow to be released) BdoofDentalEx: <ul style="list-style-type: none"> ▶ No requests ▶ n/a MedicalMutual: <ul style="list-style-type: none"> ▶ Zero requests ▶ No changes MeMedAssn: <ul style="list-style-type: none"> ▶ MMA does not administer ▶ No changes | 9/27: table - ask medical licensing boards for input 11/4: tabled until 2011 | |

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Revised 7/12/2011 3:24 PM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/ AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|--|--|---|--|--|
| 69 | 2853 | 1-A | Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act | BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) (ME Medical Assoc., ME trial Lawyers Assoc., ME State Bar Assoc.) | BOI has no role <ul style="list-style-type: none"> Records filed with the Superior Court BdLicMed: <ul style="list-style-type: none"> Cited 100-200 times per year, but doesn't usually receive court documents No changes MeHospAssn: <ul style="list-style-type: none"> Not aware if requests are made to courts No changes BdofDentalEx: <ul style="list-style-type: none"> No requests n/a MedicalMutual: <ul style="list-style-type: none"> No direct role in administration No changes McMedAssn: <ul style="list-style-type: none"> MMA does not administer No changes | 9/27: table - ask medical licensing boards, Maine Trial Lawyers for input 11/4: tabled until 2011 | |

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Revised 7/12/2011 3:24 PM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/ AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|--|--|---|--|--|
| 70 | 24 | 2857 | 1 and 2, relating to mandatory prelitigation screening and mediation panels | BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) (ME Medical Assoc., ME trial Lawyers Assoc., ME State Bar Assoc.) | BOI has no role <ul style="list-style-type: none"> • Records of Screening Panels (Judicial Branch) BdLicMed: <ul style="list-style-type: none"> ▶ Not cited or applied; Bd doesn't receive panel information ▶ No recommendation MeHospAssn: <ul style="list-style-type: none"> ▶ Only partially administer ▶ Not aware about requests ▶ No changes BdofDentalEx: <ul style="list-style-type: none"> ▶ No requests ▶ n/a MedicalMutual: <ul style="list-style-type: none"> ▶ No direct role in administration ▶ No changes MeMedAssn: <ul style="list-style-type: none"> ▶ MMA does not administer ▶ No changes | 9/27: table - ask medical licensing boards, Courts, Maine Trial Lawyers for input 11/4: tabled until 2011 | |

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Revised 7/12/2011 3:24 PM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/ AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|--|-----------------------|--|---|--|
| 73 | 216 | 2, 5 | Title 24-A, section 216, subsections 2 and 5, relating to records of the Bureau of Insurance | BOI | <ul style="list-style-type: none"> Records associated with actual or claimed violations of Insurance Code 2-4 requests per month Subpoena, hearing on motion to quash No changes | 9/27: table - ask Maine Trial Lawyers for input | |
| 94 | 2393 | 2 | Title 24-A, section 2393, subsection 2, relating to workers' compensation pool self-insurance and surcharges | BOI | <ul style="list-style-type: none"> No FOA requests No changes | 10/18: Table - obsolete? Rewrite to ensure confidentiality of old records? | |

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Revised 7/12/2011 3:24 PM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/ AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|--|-----------------------|---|---|--|
| 112 | 24-A | 6807 | Title 24-A, section 6807, subsection 7, paragraph A, relating to individual identification data of viators | BOI | <ul style="list-style-type: none"> To date, the Bureau has not conducted any examinations of life settlement companies. The exception has not been cited as a basis of denial of a FOA request No changes | 10/18: Table - ask TRecord, (subpoena) 11/4: divided report - no change 3-1 (SBellows) - but flag that inconsistent with treatment of examination reports | |

G:\STUDIES 2011\Right to Know Advisory Committee\Existing Public Records Exceptions Review\Chart of remaining exceptions 7-12-11.doc (7/12/2011 3:23:00 PM)

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

June 16, 2011

TO: Members, Right to Know Advisory Committee

FROM: Senator David R. Hastings III, Senate Chair *DH*
Representative Joan M. Nass, House Chair *JMN*
Joint Standing Committee on Judiciary

Re: Judiciary Committee requests to the Right to Know Advisory Committee

Thank you for the comments on proposed public records exceptions that you were able to provide during legislative session. Time pressures were such that we could not give you much lead time; your responses within such short time constraints are appreciated.

As you know, freedom of access and the transparency of government are important issues in this State and across the nation. The Judiciary Committee is fortunate to have this Advisory Committee as a resource to sort through tough issues and use the time necessary to thoroughly review proposals. There are several issues on which we request your help.

- Accessibility of individual personal information in public records. Although this question was raised in Section 4 of *LD 917, An Act To Protect Licensing Information Provided to the Department of Inland Fisheries and Wildlife and To Require a Review of Public Access to Other Personal Information*, we frequently hear complaints and concerns about the availability of individual personal information in public records when release of that information serves no reasonable public purpose. One of our discussions included mention that Maine, unlike the federal government, has no Privacy Act or similar protections to be balanced with the need for government transparency. We request that you include this in your lists of tasks for 2011.
- Disclosure of elected officials' e-mails and other records balanced with the availability of technology and other systems necessary to maintain the records and to provide public access. *LD 1082, An Act Concerning the Protection of Personal Information in Communications with Elected Officials*, (now Public Law 2011, chapter 264) was amended by the Judiciary Committee to include unallocated language directing the

Advisory Committee to undertake this review. We are not convinced that the language enacted is the final word on the availability of e-mail and other records of elected and other public officials, but we believe it is an important first step to protect communications among legislators and other elected officials and their constituents. We think that more work should be done in this area to appropriately address confidentiality, storage and retrieval and accessibility of public records of public officials, especially elected officials. As the volume of electronic records and communications mushrooms, individual officials and agencies are faced with significant questions concerning how to categorize, store and retrieve records. Public Law 2011, chapter 264, section 2 directs the Advisory Committee to include recommendations in the 2012 annual report.

- *LD 1465, An Act To Amend the Laws Governing Freedom of Access*, sponsored by Senator Rosen, is intended to increase government transparency by enhancing the existing freedom of access laws to provide deadlines for responses to requests for public records, to ensure that requesters can access public records in the format requested and to require the designation of public access officers for every agency and political subdivision. The bill also provides funding for the Public Access Ombudsman. The Judiciary Committee carried over the bill to the Second Regular Session with the intention that the Advisory Committee take the time necessary to review each proposal within the bill and make recommendations to the Judiciary Committee. We rely on the broad range of membership of the Advisory Committee to comprehensively review and take into account the consequences of the proposed changes in LD 1465. We are confident you will appropriately weigh the competing interests and develop clear, fair recommendations.
- Bulk data. As you are well aware, there are several issues that touch on the question of the accessibility of public information in large quantities, especially in electronic or similar form. The Judiciary Committee has delayed making recommendations to other legislative committees concerning limiting access, basing costs on the proposed use and redacting private information so that we can rely on your experience and expertise. We are well aware of continuing litigation in this area, but we know this issue is much, much bigger than the pending case, and we hope you can address the broader questions that must be answered in order to develop a comprehensive approach that can be implemented across all public agencies.

We sincerely hope that you will be able to work through these requests and make progress on these important issues. We look forward to your findings and recommendations.

Thank you again for all your devotion to this worthy cause.

enclosures



125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 917

H.P. 677

House of Representatives, March 8, 2011

**An Act To Protect Licensing Information Provided to the
Department of Inland Fisheries and Wildlife and To Require a
Review of Public Access to Other Personal Information**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative FITTS of Pittsfield.
Cosponsored by Representative TILTON of Harrington.

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

2 Sec. 1. 1 MRSA §402, sub-§3, ¶P, as corrected by RR 2009, c. 1, §2, is amended
3 to read:

4 P. Geographic information regarding recreational trails that are located on private
5 land that are authorized voluntarily as such by the landowner with no public deed or
6 guaranteed right of public access, unless the landowner authorizes the release of the
7 information; and

8 Sec. 2. 1 MRSA §402, sub-§3, ¶Q, as reallocated by RR 2009, c. 1, §3, is
9 amended to read:

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

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

21 R. Names, addresses, telephone numbers, e-mail addresses and other identifying
22 information provided to the Department of Inland Fisheries and Wildlife for purposes
23 of obtaining a license under Title 12, Part 13.

24 **Sec. 4. Right To Know Advisory Committee review.** The Right To Know
25 Advisory Committee, established in the Maine Revised Statutes, Title 1, section 411,
26 shall review the accessibility of individual personal information contained in public
27 records that may be requested from public agencies under Title 1, chapter 13. For the
28 purposes of this section, "individual personal information" includes individual names,
29 addresses, telephone numbers, e-mail addresses and other personal information identified
30 by the committee the publication of which would serve no reasonable public purpose.
31 The committee shall report to the Joint Standing Committee on Judiciary by January 15,
32 2012 identifying those instances in which individual personal information maintained by
33 public agencies is accessible under the freedom of access laws and making
34 recommendations regarding any statutory changes necessary to make confidential any
35 such individual personal information for which disclosure would serve no reasonable
36 public purpose.

37 **SUMMARY**

38 This bill provides that names, addresses, telephone numbers, e-mail addresses and
39 other identifying information provided to the Department of Inland Fisheries and Wildlife
40 for purposes of obtaining a license are not public records and directs the Right To Know

1 Advisory Committee to review instances when public agencies maintain name of, contact
2 information for and other personal information regarding individuals and make
3 recommendations to the Joint Standing Committee on Judiciary regarding statutory
4 changes necessary to protect individual personal information from disclosure if that
5 disclosure would serve no reasonable public purpose.



125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1465

S.P. 456

In Senate, April 12, 2011

An Act To Amend the Laws Governing Freedom of Access

Reference to the Committee on Judiciary suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator ROSEN of Hancock.

Cosponsored by Senators: ALFOND of Cumberland, COLLINS of York, DIAMOND of Cumberland, FARNHAM of Penobscot, HILL of York, HOBBS of York, KATZ of Kennebec, LANGLEY of Hancock, MARTIN of Kennebec, MASON of Androscoggin, McCORMICK of Kennebec, PLOWMAN of Penobscot, RECTOR of Knox, SHERMAN of Aroostook, SNOWE-MELLO of Androscoggin, THIBODEAU of Waldo, WHITTEMORE of Somerset, Representatives: BEAVERS of South Berwick, DUNPHY of Embden, EVES of North Berwick, GUERIN of Glenburn, HARVELL of Farmington, HAYES of Buckfield, HINCK of Portland, O'CONNOR of Berwick, OLSEN of Phippsburg, ROSEN of Bucksport, SIROCKI of Scarborough, STRANG BURGESS of Cumberland, TURNER of Burlington.

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

2 Sec. 1. 1 MRSA §402, sub-§1-B is enacted to read:

3 1-B. Public access officer. "Public access officer" means the person fulfilling the
4 duties as described in section 413.

5 Sec. 2. 1 MRSA §406, as amended by PL 1987, c. 477, §4, is further amended to
6 read:

7 **§406. Public notice**

8 Public notice ~~shall~~ must be given for all public proceedings as defined in section 402,
9 if these proceedings are a meeting of a body or agency consisting of 3 or more persons.
10 This notice ~~shall~~ must be given ~~in ample time to allow public attendance~~ not less than 3
11 days prior to the public proceeding and ~~shall~~ must be disseminated in a manner
12 reasonably calculated to notify the general public in the jurisdiction served by the body or
13 agency concerned. In the event of an emergency meeting, local representatives of the
14 media ~~shall~~ must be notified of the meeting, whenever practical, the notification to
15 include time and location, by the same or faster means used to notify the members of the
16 agency conducting the public proceeding.

17 Sec. 3. 1 MRSA §408, as amended by PL 2009, c. 240, §4, is further amended to
18 read:

19 **§408. Public records available for public inspection and copying**

20 **1. Right to inspect and copy.** Except as otherwise provided by statute, every person
21 has the right to inspect and copy any public record during the regular business hours of
22 the agency or official having custody of the public record ~~within a reasonable period of~~
23 ~~time after making a request to inspect or copy the public record~~ the time limits
24 established in section 408-A. An agency or official may request clarification concerning
25 which public record or public records are being requested, but in any case the agency or
26 official shall acknowledge receipt of the request within a reasonable period of time. A
27 person may request by telephone that a copy of the public record be mailed or e-mailed to
28 that person.

29 **2. Inspection, translation and copying scheduled.** Inspection, translation and
30 copying may be scheduled to occur at such time as will not delay or inconvenience the
31 regular activities of the agency or official having custody of the public record sought, as
32 long as the inspection, translation and copying occur within the time limits established in
33 section 408-A. The agency or official may use a 3rd party to make a copy of an original
34 public record, but a requester may not remove the original of a public record from the
35 agency or official.

36 **2-A. Form.** If a public record exists in electronic or magnetic form, the requester
37 may request a copy of the public record in a paper, electronic, magnetic or other medium,
38 specify the storage medium and request that the copy be provided by an electronic
39 transfer by the Internet or other means.

1 A. An agency or official shall provide a copy of the public record in the requested
2 medium if:

3 (1) The agency or official has the technological ability to produce the public
4 record in that medium or can obtain the assistance necessary to produce the
5 public record at a reasonable cost; and

6 (2) The requester agrees to pay the agency's or official's costs to purchase and
7 install any additional necessary computer software or hardware to accommodate
8 the request and to copy the public record in a requested medium.

9 B. If an agency or official cannot provide a copy of a public record in a requested
10 medium, the agency or official shall identify every medium in which the public
11 record can be provided for inspection and copying, which must include a paper copy,
12 and the requester must identify the medium that is acceptable to the requester.

13 **3. Payment of costs.** Except as otherwise specifically provided by law or court
14 order, an agency or official having custody of a public record may charge fees as follows.

15 A. The agency or official may charge a reasonable fee to cover the cost of copying.

16 B. The agency or official may charge a fee to cover the actual cost of searching for,
17 retrieving and compiling the requested public record of not more than \$10 per hour
18 after the first hour of staff time per request. Compiling the public record includes
19 reviewing and redacting confidential information.

20 C. If translation is necessary, the agency or official may charge a fee to cover the
21 actual cost of translation.

22 D. An agency or official may not charge for inspection.

23 E. If the requester requests that the public record be mailed, the agency or official
24 may charge a fee not greater than the actual cost of mailing the record.

25 **4. Estimate.** The agency or official shall provide to the requester an estimate of the
26 time necessary to complete the request and of the total cost. If the estimate of the total
27 cost is greater than \$20, the agency or official shall inform the requester before
28 proceeding. If the estimate of the total cost is greater than \$100, subsection 5 applies and
29 the estimate must be provided within 3 business days of the request.

30 **5. Payment in advance.** The agency or official may require a requester to pay all or
31 a portion of the estimated costs to complete the request prior to the translation, search,
32 retrieval, compiling and copying of the public record if:

33 A. The estimated total cost exceeds \$100; or

34 B. The requester has previously failed to pay a properly assessed fee under this
35 chapter in a timely manner.

36 **6. Waivers.** The agency or official may waive part or all of the total fee if:

37 A. The requester is indigent; or

38 B. Release of the public record requested is in the public interest because doing so
39 is likely to contribute significantly to public understanding of the operations or

1 activities of government and is not primarily in the commercial interest of the
2 requester.

3 **Sec. 4. 1 MRSA §408-A** is enacted to read:

4 **§408-A. Timelines**

5 **1. Availability; redaction; location; collection.** A public record must be made
6 available immediately upon request unless time is required to redact the record so as to
7 allow inspection and copying of only those portions of the record containing information
8 that is a public record or to locate and collect a record that is not in active use or that is in
9 storage.

10 **2. Certification.** If a public record is not available immediately, a public access
11 officer shall promptly certify that fact in writing to the requester, provide an explanation
12 for the delay and either provide an opportunity to inspect or copy the public record within
13 5 business days or mail or e-mail the public record within 5 business days.

14 **3. Large or multiple requests.** If a large public record is requested or multiple
15 public records are requested and the public access officer or a person acting on behalf of
16 the agency or official cannot in the exercise of due diligence produce the entire record or
17 multiple records within 5 business days after the request, the public access officer shall
18 provide the portion of the public record or public records when available. The requester
19 may waive this requirement and request to see the public record or public records
20 requested as a whole when available.

21 **4. Estimate.** If the cost to comply with a request to inspect or copy a public record
22 is greater than \$100, an estimate must be provided within 3 business days of the request.

23 **5. Failure to comply.** Failure to comply with this section may be treated as a denial
24 of a request and is subject to the enforcement provisions of this chapter.

25 **Sec. 5. 1 MRSA §408-B** is enacted to read:

26 **§408-B. Inspection by requester**

27 **1. Ten business days.** A requester shall complete an inspection of a public record
28 within 10 business days after the record is made available for inspection. If the
29 inspection is not completed within the 10-business-day period, a public access officer or a
30 person acting on behalf of the agency or official shall inform the requester that a written
31 request for additional time may be filed with the agency or official that has custody of the
32 public record.

33 **2. Additional periods.** An agency or official shall allow an additional 20 business
34 days beyond the period in subsection 1 for a requester to review a public record if the
35 requester filed a written request for additional time with the agency or official or its
36 public access officer or a person acting on behalf of the agency or official. If the
37 inspection is not completed upon the expiration of the additional 20 business days, the
38 public access officer or person acting on behalf of the agency or official shall inform the

1 requester that a 2nd written request for an additional 10 days may be filed with the
2 agency or official that has custody of the public record.

3 **3. Interruption of inspection.** The time allowed for inspection of a public record
4 may be interrupted if the agency or official needs to use the public record. If an agency or
5 official invokes this subsection, the public access officer, no later than 5 business days
6 after the agency or official takes the record back, shall inform the requester in writing the
7 dates that the public record will be available for the inspection to resume. The time
8 allowed for an inspection is tolled during the period in which the public record is being
9 used by the agency or official.

10 **Sec. 6. 1 MRSA §410**, as repealed and replaced by PL 1987, c. 477, §6, is
11 amended to read:

12 **§410. Violations; injunction**

13 For every willful violation of this subchapter, the state government agency or local
14 government entity whose officer or employee committed the violation ~~shall be~~ is liable
15 for a civil violation for which a ~~forfeiture~~ fine of not more than \$500 may be adjudged.

16 The Superior Court may issue an injunction to enforce the provisions of this chapter
17 against any agency or official. A motion for an injunction is privileged in respect to its
18 assignment for hearing and trial over all other actions except writs of habeas corpus and
19 actions brought by the State against individuals.

20 **Sec. 7. 1 MRSA §412**, as amended by PL 2007, c. 576, §2, is further amended to
21 read:

22 **§412. Public records and proceedings training for certain elected officials and**
23 **public access officers**

24 **1. Training required.** ~~Beginning July 1, 2008, an~~ An elected official and a public
25 access officer, subject to this section shall complete a course of training on the
26 requirements of this chapter relating to public records and proceedings. The official or
27 officer shall complete the training not later than the 120th day after the date the elected
28 official takes the oath of office to assume the person's duties as an elected official or the
29 person is designated as a public access officer pursuant to section 413, subsection 1. ~~For~~
30 ~~election officials subject to this section serving in office on July 1, 2008, the training~~
31 ~~required by this section must be completed by November 1, 2008.~~

32 **2. Training course; minimum requirements.** The training course under subsection
33 1 must be designed to be completed by an official or a public access officer in less than 2
34 hours. At a minimum, the training must include instruction in:

- 35 A. The general legal requirements of this chapter regarding public records and public
36 proceedings;
- 37 B. Procedures and requirements regarding complying with a request for a public
38 record under this chapter; and
- 39 C. Penalties and other consequences for failure to comply with this chapter.

1 An elected official or public access officer meets the training requirements of this section
2 by conducting a thorough review of all the information made available by the State on a
3 publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding
4 specific guidance on how a member of the public can use the law to be a better informed
5 and active participant in open government. To meet the requirements of this subsection,
6 any other training course must include all of this information and may include additional
7 information.

8 **3. Certification of completion.** Upon completion of the training course required
9 under subsection 1, the elected official or public access officer shall make a written or an
10 electronic record attesting to the fact that the training has been completed. The record
11 must identify the training completed and the date of completion. The elected official
12 shall keep the record or file it with the public entity to which the official was elected. A
13 public access officer shall file the record with the agency or official that designated the
14 public access officer.

15 **4. Application.** This section applies to the following elected officials:

- 16 A. The Governor;
- 17 B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;
- 18 C. Members of the Legislature elected after November 1, 2008;
- 19 E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers
20 of probate and budget committee members of county governments;
- 21 F. Municipal officers, clerks, treasurers, assessors and budget committee members of
22 municipal governments;
- 23 G. Officials of school units and school boards; and
- 24 H. Officials of a regional or other political subdivision who, as part of the duties of
25 their offices, exercise executive or legislative powers. For the purposes of this
26 paragraph, "regional or other political subdivision" means an administrative entity or
27 instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a
28 quasi-municipal corporation or special purpose district, including, but not limited to,
29 a water district, sanitary district, hospital district, school district of any type, transit
30 district as defined in Title 30-A, section 3501, subsection 1 or regional transportation
31 corporation as defined in Title 30-A, section 3501, subsection 2.

32 This section also applies to a public access officer designated pursuant to section 413,
33 subsection 1.

34 **Sec. 8. 1 MRSA §413** is enacted to read:

35 **§413. Public access officer; responsibilities**

36 **1. Designation; responsibility.** Every agency or official shall designate to an
37 existing staff member the responsibility of serving as a public access officer to oversee
38 responses to requests for public records under this chapter. The public access officer
39 shall oversee the prompt response to a request to inspect or copy a public record.

1 The bill provides funding for an Assistant Attorney General position located in the
2 Office of the Attorney General to act as the public access ombudsman, which is a
3 part-time position.

JUN 20 '11 390

STATE OF MAINE

BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 865 - L.D. 1167

An Act To Protect the Privacy of Persons Involved in Reportable Motor
Vehicle Accidents

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

Sec. 1. 29-A MRSA §2251, sub-§7, as amended by PL 2003, c. 709, §4, is further amended to read:

7. Report information. An accident report made by an investigating officer or a ~~48-hour~~ report made by an operator as required by ~~former~~ subsection ~~§ 2~~ is for the purposes of statistical analysis and accident prevention.

A report or statement contained in the accident report, or a ~~48-hour~~ report as required by ~~former~~ subsection ~~§ 2~~, a statement made or testimony taken at a hearing before the Secretary of State held under section 2483, or a decision made as a result of that report, statement or testimony may not be admitted in evidence in any trial, civil or criminal, arising out of the accident.

A report may be admissible in evidence solely to prove compliance with this section.

~~The~~ Notwithstanding subsection 7-A, the Chief of the State Police may disclose the date, time and location of the accident and the names and addresses of operators, owners, injured persons, witnesses and the investigating officer. On written request, the chief may furnish a photocopy of the investigating officer's report at the expense of the person making the request. The cost of furnishing a copy of the report is not subject to the limitations of Title 1, section 408, subsection 3.

Sec. 2. 29-A MRSA §2251, sub-§7-A is enacted to read:

7-A. Accident report database; public dissemination of accident report data.
Data contained in an accident report database maintained, administered or contributed to by the Department of Public Safety, Bureau of State Police must be treated as follows.

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

(1) "Data" means information existing in an electronic medium and contained in an accident report database.

(2) "Nonpersonally identifying accident report data" means any data in an accident report that are not personally identifying accident report data.

(3) "Personally identifying accident report data" means:

(a) An individual's name, residential and post office box mailing address, social security number, date of birth and driver's license number;

(b) A vehicle registration number;

(c) An insurance policy number;

(d) Information contained in any free text data field of an accident report; and

(e) Any other information contained in a data field of an accident report that may be used to identify a person.

B. 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, records administered or contributed to by the Bureau of State Police. Such data are not public records for the purposes of Title 1, chapter 13.

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

JUN 10 '11 299

STATE OF MAINE

BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 963 - L.D. 1317

An Act Concerning Sex Offender Registry Information

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

Sec. 1. 34-A MRSA §11221, sub-§9-A is enacted to read:

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

- A. Information provided to the public pursuant to subsection 9; and
- B. Applications and bureau decisions, including any documents made part of those decisions, pursuant to section 11202-A.

Sec. 2. 34-A MRSA §11221, sub-§10, as amended by PL 2003, c. 711, Pt. C, §20 and affected by Pt. D, §2, is further amended to read:

10. Registrant access to information. Pursuant to Title 16, section 620, the 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.

Sec. 3. 34-A MRSA §11221, sub-§13 is enacted to read:

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

- A. Except as made available to the public through the bureau's Internet website pursuant to subsection 9, the bureau may not disseminate in electronic form information about a registrant that is created, collected or maintained in electronic form by or for the bureau; and
- B. Except as made available to the public through an Internet website maintained by a law enforcement agency pursuant to subsection 12, a law enforcement agency may not disseminate in electronic form information about a registrant that is collected or maintained in electronic form by or for the law enforcement agency.

Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Using technology to conduct public proceedings

PART A

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

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

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

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

A. The body has adopted a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other means of communication in accordance with this section.

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

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406.

D. The physical attendance by each member who is participating from another location is not reasonably practical. The reason that each member's physical attendance is not reasonably practical must be stated in the record of the public proceeding.

E. Each member of the body participating in the public proceeding is able to simultaneously hear each other and speak to each other during the public proceeding. Members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations.

F. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication identifies the persons present in the location from which the member is participating.

G. All votes taken during the public proceeding are taken by roll call vote.

H. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available.

I. The public proceeding is not a public hearing.

2. Voting. A member of a body who is not physically present and who is participating in the public proceeding through telephonic, video, electronic or other means of communication may not vote:

A. On any issue for which materials providing additional information that may influence the member's decision are presented at the public proceeding but have not been provided to the member by the time of the vote; or

B. On any issue concerning testimony or other evidence provided during the public proceeding if it is a judicial or quasi-judicial proceeding.

3. Exception to quorum requirement. A body may convene a public proceeding by telephonic, video, electronic or other means of communication without a quorum assembled physically at one location if:

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

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

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

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

Seek input of agencies before making legislative changes to statutory procedures below.

PART B

Finance Authority of Maine

Sec. B-1. 10 MRSA §971 is amended to read:

§971. Actions of the members

Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a majority of those members present and voting is necessary for any action taken by the members. No vacancy in the membership of the authority may impair the right of the quorum to exercise all powers and perform all duties of the members.

Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with Title 1, section 403-A and the following.

1. Placement of call. A conference call to the members must be placed by ordinary commercial means at an appointed time.

2. Record of call. The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.

3. Notice of emergency meeting. Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and that is available for members of the public to hear the business conducted at the telephone meeting.

Ethics Commission (any changes?)

Sec. B-2. 21-A MRSA §1002 is amended to read:

§1002. Meetings of commission

1. Meeting schedule. The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held and every 2 weeks in the 60 days preceding an election. In the 28 days preceding an

election, the commission shall meet in Augusta within one calendar day of the filing of any complaint or question with the commission. Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.

2. Telephone meetings. The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

A. During the 28 days prior to an election when the commission is required to meet within 24 hours of the filing of any complaint or question with the commission; or

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

3. Other meetings. The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

4. Office hours before election. The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election and from 8 a.m. until at least 8 p.m. on election day.

Emergency Medical Services Board

Sec. B-3. 32 MRSA §88, sub-§1, ¶D is amended to read:

§88. Emergency Medical Services' Board

The Emergency Medical Services' Board, as established by Title 5, section 12004-A, subsection 15, is responsible for the emergency medical services program.

1. Composition; rules; meetings. The board's composition, conduct and compensation are as follows.

A. The board has one member representing each region and 11 persons in addition. Of the additional persons, one is an emergency physician, one a representative of emergency medical dispatch providers, 2 representatives of the public, one a representative of for-profit ambulance services, one an emergency professional nurse, one a representative of nontransporting emergency medical services, one a representative of hospitals, one a representative of a statewide association of fire chiefs, one a municipal emergency medical services provider and one a representative of not-for-profit ambulance services. The members that represent for-profit ambulance services, nontransporting emergency medical services and not-for-profit ambulance services must be licensed emergency medical services persons. One of the nonpublic members must be a volunteer emergency medical services provider. Appointments are for 3-year terms. Members are appointed by the Governor. The state medical director is an ex officio nonvoting member of the board.

B. The board shall elect its own chair to serve for a 2-year term. The board may adopt internal rules that may include, but are not limited to, termination of board membership as a consequence of irregular attendance. If a board member does not serve a full term of appointment, the Governor shall appoint a successor to fill the vacancy for the remainder of the term. Any board member may be removed by the Governor for cause. The board may have a common seal. The board may establish subcommittees as it determines appropriate.

C. The board shall meet at least quarterly, and at the call of its chair or at the request of 7 members. When the board meets, members are entitled to compensation according to the provisions of Title 5, chapter 379.

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

Workers' Compensation Board

Sec. B-4. 39-A MRSA §151, sub-§5 is amended to read:

5. Voting requirements; meetings. The board may take action only by majority vote of its membership. The board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology in compliance with Title 1, chapter 13, subchapter 1. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

GASTUDIES 2011\Right to Know Advisory Committee\meetings by tech draft FINAL per RTKAC 09-23-10 mtg.doc (7/13/2011 2:07:00 PM)

11/17/10

Notes from feedback from entities whose current statutes allow meetings via communication technology when less than a quorum is physically present: Finance Authority of Maine, the Emergency Medical Services Board, the Ethics Commission, (Workers' Compensation Board has not yet responded)

FAME

- Proposed changes appear to allow all agencies that are currently not allowed to use technology to conduct public proceedings to do so, even in cases of non-emergencies, while allowing FAME to use this option only in the case of emergencies (would like to maintain ability to hold meetings electronically in limited circumstances – in “emergencies in the realm in which we operate” – i.e., making credit decisions on less than 3 days’ notice; if other entities will have the ability to proceed electronically in non-emergencies, FAME wants same authority) (1 MRSA §403-A)
- Business assistance emergencies in past have required counting telephonic participants for a quorum – suggest removing requirement that quorum must be physically present (have used option only 3 times in last 5 years) (1 MRSA §403-A, sub-§1, ¶C)
- Exception should be made regarding requirement of providing materials or disallowing a member who is participating remotely to vote; sometimes materials (documents, objects, displays) are provided late or at the meeting and it is not practical or possible to furnish them (1 MRSA §403-A, sub-§1, ¶H; §403-A, sub-§2, ¶A)
- Exception to public hearing rule should be made for common case of pro forma public hearings in rule making: APA requires 1/3 of board members present, but FAME usually holds rule making hearings on monthly meeting days (quorum 7/15 required); written comments also allowed for rule making (1 MRSA §403-A, sub-§1, ¶I)
- Emergencies identified in draft (Governor-declared or health emergency) not FAME emergencies, like potential business closings, Friday evening payroll issues; current law allows FAME to hold emergency meetings with 3 days’ notice (10 MRSA §971) – exceptions proposed should be broadened to allow for current statute and other exceptions or those requirements should be deleted. FAME could satisfy 1 MRSA §403-A, sub-§3 ¶¶B & C.

FAME prefers keeping existing statute in the books and unamended; able to comply with most of the proposed changes but ask that you consider needs and practicalities of members and mission.

EMS

- Per budget curtailments, meet once every 2 months; if this extended meeting time has negative impact on operation, brief meeting(s) may be held with majority of members calling in via conference call (room is posted and meeting open to public; staff, AAG, and local members attend in person); cost of meeting for in person is greater than \$1,000 (travel costs) and less than \$100 for conference call meeting (1 MRSA §403, sub-§1, ¶C)
- What is “reasonably practical?” Last two administrations promoted using technology to reduce costs and increase participation – this is an unclear restriction that would take us a step backwards (1 MRSA §403, sub-§1, ¶C)
- Roll call necessary if vote unanimous? (1 MRSA §403, sub-§1, ¶G)

- 32 MRSA §88, sub-§2, ¶B requires meetings be held in 6 regions and includes allowing use of available technology; always have staff at each region, but allowing board members and public to participate via videoconference has increased participation (1 MRSA §403, sub-§1, ¶I)

Other proposed changes would be manageable.

Ethics Commission

- Within the last 28 days before an election, must meet within one calendar day of the filing of any complaint or question (21-A MRSA §1002, sub-§1); this is a challenging requirement, and although most members attend these meetings in person, occasionally one must participate via phone (21-A MRSA §1002, sub-§2)
- One issue may affect us, as well as others – usually matters are considered and decided in one meeting, and there is an open policy of accepting written materials during the course of the meeting. To meet new requirement and allow a member participating electronically to vote, a staff person would have to convert materials to pdfs and email them; sometimes our email system does not allow transmission of very large documents. Suggest allowing the board or the individual member to have discretion as to whether it is appropriate to vote, instead of creating a blanket prohibition for all bodies.

Believe that the Commission can work around the general requirements and wouldn't need exceptions. If draft goes forward, also suggest repealing 21-A MRSA §1002, sub-§2.

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|-----------|-----------------|------------|------------------------|------------------|------------------|-----------|
| July 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 31 | August 1 | 2 | 3 | 4 | 5 | 6 |
| 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| 28 | 29 | 30 | 31 | September 1 | 2 | 3 |
| 4 | Labor Day 5 | 6 | 7 | 8 | 9 | 10 |
| 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | October 1 |
| 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 9 | Columbus Day 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | 31 | November 1 | 2 | 3 | 4 | 5 |
| 6 | 7 | 8 | 9 | 10 | Veterans' Day 11 | 12 |
| 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | Thanks-giving 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | December 1 | 2 | 3 |
| 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | Christmas 26 | 27 | 28 | 29 | 20 | 31 |
| January 1 | 2 | 3 | Legislature convenes 4 | 5 | 6 | 7 |

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APRIL 12, 2011

Margaret Reinsch

Senior Legal Analyst

Judiciary Committee

Right to Know Advisory

Committee

The Maine Public Broadcasting Network is Maine's largest statewide news and public affairs organization with administrative offices and production facilities for radio and television in Lewiston, Bangor, Augusta and Portland. The station's transmitters and translators are located throughout the state delivering programs to nearly all of Maine citizens. The organization employs 119 staff members. According to the organization's IRS 990 Form ending 6/30/10, MPBN net assets were \$15,473,227. According to MPBN's own audit ending June 30, 2010 it received government support of \$1,954,235 from the State of Maine, \$1,574,366 from the Corporation for Public Broadcasting and government grants of \$33,016.

MPBN comes under the FOA Act as "the board of directors of a non-profit, non-stock private corporation that provides statewide noncommercial public broadcasting services and any

of its committees and subcommittees” and as such under FOA’s public proceedings “means the transaction of any functions affecting any and all citizens of the state.”

Cove Writers, Inc. and Hometown News Service are news companies producing columns for Maine and other state’s newspapers. Hometown News Service is the longest serving continuous member of the State House Newspersons, the press corps with offices in the Cross Building. Both news organizations have as its president and chief journalist, Allen D. (Mike) Brown.

On December 15, 2010, Cove Writers, Inc. filed a FOA request to MPBN President James Dowe for certain financial information. **(See Copy Enclosed)**. A FOA request is mandated by a reply within five working days. No reply came within that period or in subsequent weeks although several attempts to reach President Dowe were futile until February 2011 with a phone call from John F. Isacke, Vice President and Chief Financial Officer which was 45 days from the original request and 40 days in violation of the FOA Act. I requested of Mr. Isacke to put his response in writing which he did with letter dated 2/3/11. **(See Copy Enclosed)**. Although certain MPBN financials were forwarded, two items (1) a copy of MPBN’s current roster of full-time employees with their job titles and ranges for pay grades, and (2) a current copy listing part-time and/or contract employees who received IRS Form 1099 including the amounts they received were omitted.

According to Mr. Isacke the two omitted items do not apply under the FOA Act.

On March 25, 2011, Cove Writers, Inc. filed a FOA to P. James Dowe, President, MPBN, requesting a copy of MPBN's IRS Form 1099-Misc. listing persons and/or companies or other individuals /entities including the amounts received. There was no response after five days. In fact, there was no response at all.

After searching the relevant history files of the FOA Act and the Right to Know Advisory Committee which was created by Public Law 2005, chapter 631, and which has the oversight and responsibility of recommending changes to the Judiciary Committee, I can find no exception that any of the requests in the original letter of December 15, 2010 to Mr. Dowe are confidential and therefore exempt as stated by Mr. Isacke.

However, if Mr. Isacke's presumption is correct, then there is a gross conflict in that although MPBN comes under FOA's "Proceedings" as Mr. Isacke admits, it does not under "Public Records." Therefore, it challenges the general purpose of the Maine FOA as "transactions of any functions affecting any and all citizens of the state" and specifically and effectively labeling all MPBN public records as confidential. Mr. Isacke did respond to requests for some information under "Public Records" but chose to withhold other information under "Public Records" therefore "picking and choosing" what public records to reveal to the public.

MPBN is Maine's only "non-profit corporation that provides statewide noncommercial public broadcasting services" and therefore specifically under Maine's Freedom of Access Act.

The Right to Know Advisory Committee should review MPBN's proprietary stance on Public Records in view of its tremendous media influence in Maine and as the recipient of nearly two million annually of taxpayer funds. If Mr. Isacke is correct then MPBN is under Maine's FOA Act in name only and escapes public access to all of its public records or whatever it chooses to reveal.

On February 17, 2011 a column bylined by Mike Brown was printed in the Ellsworth American (**See Copy enclosed**) revealing financials of MPBN ending June 2009 with the questions of MPBN's cavalier illegal time responses and why if the State of Maine taxpayers were contributing nearly \$2 million to a non-profit, private news corporation then why it did not come fully under the FOA Act?

Efforts are current and continuing to obtain full compliance from MPBN but so far it refuses to release requested information under Maine's Freedom of Information law claiming confidentially of personnel records.

Enclosures:



Allen D. (Mike) Brown, President

Hometown News Service

State House Station 162

Augusta, ME 04333

Phone 287-4899

E-mail brown@midcoast.com

COVE WRITERS, INC.

INDEPENDENT SYNDICATION
78 CLIFF ROAD, SATURDAY COVE
NORTHPORT, MAINE 04849

TELEPHONE (207) 338-3419

FAX (207) 338-4992

December 15, 2010

Jim Dowe, President
Maine Public Broadcasting Network
1450 Lisbon Street
Lewiston, Maine

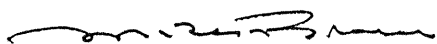
Dear Mr. Dowe:

Pursuant to Title 1, MRSA, Chap. 13, Maine's Freedom of Access Law, I am requesting the following information:

- 1.) The most recent audited financial statement of MPBC.
- 2.) A copy of MBPC's latest filed IRS 990 form.
- 3.) A copy of MPBC's current roster of full-time employees with their job titles and ranges for pay grades.
- 4.) A current copy listing MPBC's part-time and/or contract employees who received IRS Form 1099 including the amounts they received.
- 5.) The names of current MPBC Board of Trustees and their terms of office.

Thank you Mr. Dowe for your past cooperation and prompt reply to the above requests. Also if you have any comment on content and activity of your organization please include it your reply.

Sincerely,



Allen D. (Mike) Brown, President
Cove Writers, Inc.
Hometown News Service



Maine Public Broadcasting Network

1450 Lisbon Street, Lewiston, Maine 04240-3595 · 800-884-1717 · 207-783-9101 · Fax 207-783-5193

February 3, 2011

Allen D. Brown
Cove Writers, Inc.
78 Cliff Road, Saturday Cove
Northport, Maine 04849

Re: Your request of December 15, 2010

Dear Mr. Brown,

It was nice speaking with you on the phone yesterday. As I stated during our conversation, I do not believe that the items you have requested are all subject to Title 1, MRSA, Chapter 13 – Maine's Freedom of Access law. My beliefs in that regard are as follows:

- As I told you, I am not a lawyer, but my simple reading of Chapter 13 is that it pertains to Public Proceedings and to Public Records.
- With respect to Public Proceedings, the work of MPBN's Board of Directors, its committees and subcommittees are specifically included in §402 2. E. MPBN maintains a public file of all such meetings and those files are available for review, upon request, in our Lewiston office as provided under the Freedom of Access law.
- As it pertains to Public Records, it is my belief that MPBN is neither an agency of the state nor are its employees public officials. As such, it is my belief that the Public Records provisions of Chapter 13 do not apply to MPBN.

Within that context, my response to each of your questions follows:

1. Enclosed, for your convenience, is a copy of MPBN's audited financial statements for the years ended June 30, 2010 and 2009. This document is made available to the public on our website, www.mpbnet.net.
2. Enclosed, for your convenience, is a copy of MPBN's draft Form 990 for the year ended June 30, 2010. I will let you know if any substantive changes are made prior to its filing which is due February 15, 2011. This document is also made available to the public through both the IRS website and on MPBN's website, www.mpbnet.net.
3. The roster of full-time employees, their job titles and salary ranges is not a document we normally share and is not enclosed. However, the Form 990

Television • Radio • Education • Internet

With offices and studios in Bangor, Lewiston and Portland
mpbn.net

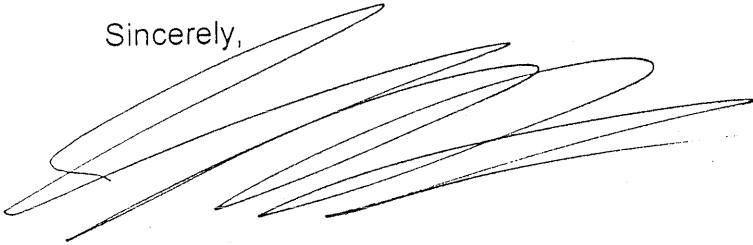
- referred to above discloses for all employees who are compensated at \$100,000 or higher, their name, title and total compensation.
4. The listing of part-time and/or contract employees who received an IRS Form 1099 and the amounts they received is not a document we normally share and is not enclosed.
 5. A listing of our Board of Trustees is also made available to the public on our website, www.mpbnet.net . A listing, including their terms of office is enclosed for your convenience.

I again apologize for the tardiness of my reply to your request.

If there is anything else I can do for you, do not hesitate to contact me directly. I have enclosed one of my business cards. It contains my direct contact information.

When and if an article results from this information response, I would appreciate receiving a copy. Thank you.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and strokes.

John F. Isacke
Vice President and Chief Financial Officer

Cc: Alan L. Baker, Publisher, The Ellsworth American (w/o Enc)
P. James Dowe, President, Maine Public Broadcasting Network (w/o Enc)

MPBN's Violation of the Maine FOA Act

The Maine Freedom of Access Act lies at the heart of a democratic government. It grants the people of this state a broad right of access to public records with transparency, a fundamental principle of the Act. Within its many statute definitions is the right to a filer's response within five days.

On December 15, 2010 filer Hometown News Service requested of James Dowe, president of Maine Public Broadcasting Network, certain financial records of MPBN under the Freedom of Access Act. The response date was overdue on January 7, 2011 and the filer contacted the MPBN office and was informed that the request had been forwarded to the financial department. On January 17, there was still no response. As the filer contemplated court action under the Act there was a phone response on 2/3/11/ from John F. Isacke, MPBN vice president and chief financial officer, which was 45days from the original response and some forty days in violation of the Freedom of Access Act.

MPBN comes under the Act's public proceedings definitions as "the board of directors of a non-profit, non-stock, private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees."

Although VP Isacke provided hard copy duplicates of certain financials—IRS 990 for 2009 and Audited Report, 2010 - he wrote in a cover letter that, "I do not believe that all the items requested are subject to the FOA Act." He further stated, "I am not a lawyer, but my simple reading of Chapter 13, as it pertains to Public Records is that neither is MPBN an agency of the state nor are its employees public officials."

What VP Isacke was referring to in the filer's request was (1) a copy of MPBN's full-time employees with their job titles and ranges for pay grade and (2) a listing of contract employees who received IRS Form 1099 and the amounts they received. These two items have been in the filer's request to MPBN for nearly a decade and fully furnished even with specific names and specific salary although only a salary range was requested.

MPBN is one of the largest media corporations in Maine employing 119 employees and therefore has considerable impact on information, ideas and news content in programs provided to nearly all of Maine citizens through transmitters throughout the state.

MPBN is a \$15.5 million tax-exempt corporation according to its 2009 IRS report. A substantial revenue stream is public support, that is, taxpayer funds. In its 2010 revenue, the State of Maine, via taxpayers, contributed \$1,954,235 and the Corporation for Public Broadcasting, via taxpayers, \$1,574,366, other government grants of \$33,016, via taxpayers, for a total of \$3,561,617. The MPBN membership revenue was \$3,566,370 or only \$4,753 more than public taxpayer support.

According to its 2010 audit, the reported 118 anonymous (so stated VP Isacke) employees received \$5,001,699 in salaries and benefits. The only employee identified in the IRS 990 Form was President James Dowe with a salary of \$156,325 plus \$7,328 in retirement and other deferred compensation.

Phone conversations with VP Isacke indicated that the reason for the 'delay' of response - he did not admit to violation of the Act - was that he was "too busy." Also, he objected to sending hard copy data when the internet was available. However, in its self-praising organization overview on its IRS 2009 Form it states precisely, "Any member of the general public can also request either verbally or in writing that these documents be sent to them."

As to VP Isacke's 'simple reading' of the FOA Act that MPBN is not subject to Public Proceedings and Public Records under the Act in regard to employee salaries and pay ranges - that private opinion appears to be in conflict with the term "public proceedings meaning the transactions of any function affecting any and all citizens of the state." The fact that Maine citizens contributed \$1,954,235 to support MPBN salaries and benefits in 2010 should be considered a function.

Apparently there has been some shading in the transparency of MBPN since the open and full cooperation of MPBN President Jim Dowe through the years. The fact that MPBN was 45 days late and in violation of the FOA Act should be of considerable concern of all citizens and

especially the state legislature which appropriates millions in support of MPBN programming when the state itself has financial concerns of providing its citizens with basic needs of subsistence livability with the challenge of declining revenues.

Nothing so darkens the transparency of government and its ancillary providers of public information than the shadows of silence.

2

McCarthyReid, Colleen

From: Dwight Hines [dwight.hines@gmail.com]
Sent: Tuesday, July 05, 2011 11:14 AM
To: McCarthyReid, Colleen
Cc: Dwight Hines
Subject: Email to Ms. Reinsch is bouncing. Please let me know you received this email

Dear Ms. McCarthy Reid:

I sent the request below to Ms. Reinsch and it bounced. Please consider my request to have the items placed on the agenda for the July 15th Advisory Committee Meeting.

In addition, I would like to include changing the present five day limit to file court actions for FOAA violations. The limit is much too short.

Dwight Hines

Dear Ms. Reinsch:

I have a couple of issues that possibly need some consideration by the Advisory Committee and possible legislative action: 1) Definition of "reasonable time": 2) Exemption from FOAA claimed by some volunteer fire departments who claim they are not covered by Maine FOAA because they have putatively incorporated as non-profits. (I use putatively because they are not following federal guidelines for non-profits and one has lost it's non-profit status). It appears now that there are 39 or so non-profit, volunteer fire departments in Maine. What concerns me is that they are large budget departments, even though they are volunteer. Do I need to request these items be placed on the agenda for July 15? I plan on attending.

Dwight Hines

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- > organizational meeting for *Friday, July 15, 2011*, starting at *9:00 a.m.
- > *in Room 438 of the State House.
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- > The meeting is open to the public and the audio will be available via the
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- > (If no special link, click on the link to the Judiciary Committee)
- >
- > We will start updating the Advisory Committee's website as soon as the
- > Legislature adjourns.
- > [*http://www.maine.gov/legis/opla/righttoknow.htm*](http://www.maine.gov/legis/opla/righttoknow.htm)<[http://www.maine.gov/legis/opla/righttoknow](http://www.maine.gov/legis/opla/righttoknow.htm)

- >
- > Thanks!
- > Peggy and Colleen
- >
- > Margaret J. Reinsch, Esq., Legislative Analyst
- > Joint Standing Committee on Judiciary
- > Office of Policy and Legal Analysis
- > Maine State Legislature
- > 13 State House Station
- > Augusta, Maine 04333
- > (207) 287-1670
- > (207) 287-1673 (direct and voice-mail)
- > (207) 287-1275 (fax)
- > margaret.reinsch@legislature.maine.gov
- >
- >
- >

----- Forwarded message -----

From: **Mail Delivery Subsystem** <mailer-daemon@googlemail.com>
Date: Tue, Jul 5, 2011 at 8:12 AM
Subject: Delivery Status Notification (Delay)
To: dwright.hines@gmail.com

This is an automatically generated Delivery Status Notification

THIS IS A WARNING MESSAGE ONLY.

YOU DO NOT NEED TO RESEND YOUR MESSAGE.

Delivery to the following recipient has been delayed:

Margaret.Reinsch@legislature.maine.gov

Message will be retried for 2 more day(s)

Technical details of temporary failure:

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----- Original message -----

MIME-Version: 1.0

Received: by 10.229.205.170 with SMTP id fq42mr4546442qcb.69.

1309776986305;

Mon, 04 Jul 2011 03:56:26 -0700 (PDT)

Received: by 10.229.85.82 with HTTP; Mon, 4 Jul 2011 03:56:26 -0700 (PDT)

In-Reply-To: <0CF492D652223648B67716BCCAAEC4DF0C21036D@bloo.sh.mainelegislature.org>

7/13/2011

References: <0CF492D652223648B67716BCCAAEC4DF0C21036D@bloo.sh.mainelegislature.org>

Date: Mon, 4 Jul 2011 06:56:26 -0400

Message-ID:

<CANHAWSRPZPvA2bHsqOWYEZFe=f8Yu2o_Tk8TgyZoeMGXBunkzg@mail.gmail.com>

Subject: Re: Right to Know Advisory Committee meeting

From: Dwight Hines <dwight.hines@gmail.com>

To: "Reinsch, Margaret" <Margaret.Reinsch@legislature.maine.gov>

Cc: Dwight Hines <database.sunshine@gmail.com>

Content-Type: multipart/alternative; boundary=0016369fa23300f60d04a73c383b

McCarthyReid, Colleen

From: Dwight Hines [dwight.hines@gmail.com]
Sent: Wednesday, July 06, 2011 5:07 PM
To: McCarthyReid, Colleen
Cc: Dwight Hines
Subject: U.N. Rule of Law Indicators -- Guide & Tools -- attached
Attachments: un_rule_of_law_indicators.pdf

Dear Ms. McCarthy:

Attached is the UN Rule of Law Indicators: Guide and Tools, July 2011. Please note that transparency is one of their major dimensions for the Rule of Law.

My concern with Maine FOAA as it stands now is that the erratic responses I'm receiving to requests are likely linked to poor economic development in Maine. So, even though the legislature passed the bill "To leverage federal opportunities for job creation in Maine", and the Governor signed it, the lack of transparency in local governments will thwart the realization of job creation.

My FOAA requests for municipal bonds issued by different local governments reveal so far that many of the local governments are not in compliance with full disclosure of potential negative material impacts on their ability to pay off the bonds. As a result, you have places like Rumford water district now placed on a Watchlist by Moody's Ratings with possible downgrade occurring. Rhode Island just had all their munis downgraded and it is going to cost them big bucks.

So, transparency is not just a good idea, it is an essential ingredient to getting the Maine economy going strong.

Dwight Hines

P.S Feel free to distribute the UN report as well as any of the World Bank and International Monetary Fund Reports on transparency.

On Wed, Jul 6, 2011 at 10:25 AM, McCarthyReid, Colleen

<Colleen.McCarthyReid@legislature.maine.gov> wrote:

Good morning Mr. Hines,

Thank you for your email. We will forward your email to the Right to Know Advisory Committee members so that they are aware of the issues you have raised. The committee will be convening for the first time in 2011 on July 15th and will be electing a chair at the meeting and making other organizational decisions. We anticipate having time at the end of the meeting on July 15th for other issues like the ones you raised to be considered by the committee. We expect the committee to determine which issues they would like to put on their task list for 2011 and to decide on a schedule for discussion of those issues.

Thanks again for your interest.

Colleen McCarthy Reid

Colleen McCarthy Reid, Esq.
Legislative Analyst
Joint Standing Committee on Insurance and Financial Services

Office of Policy and Legal Analysis

7/13/2011

13 State House Station
Augusta, Maine 04333-0013
(207) 287-1670 (telephone)
(207) 287-1275 (fax)
colleen.mccarthyreid@legislature.maine.gov

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- >

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Date: Mon, 4 Jul 2011 06:56:26 -0400

Message-ID:

<CANHAWSRPZPvA2bHsqOWYEZFe=f8Yu2o_Tk8TgyZoeMGXBunkzg@mail.gmail.com>

Subject: Re: Right to Know Advisory Committee meeting

From: Dwight Hines <dwight.hines@gmail.com>

To: "Reinsch, Margaret" <Margaret.Reinsch@legislature.maine.gov>

Cc: Dwight Hines <database.sunshine@gmail.com>

Content-Type: multipart/alternative; boundary=0016369fa23300f60d04a73c383b

Dwight E. Hines, Ph.D.
IndyMedia
715 Green Woods Road
Peru, Maine 04290
207-562-4701
dwight.hines@gmail.com

July 12, 2011

The Honorable William J. Schneider, Attorney General
State of Maine
6 State House Station
Augusta, Maine 04333

3

Dear Attorney General Schneider:

1) Meetings of the Peru Board of Selectmen are within the definition provided by Title 1, Chapter 13, Subchapter 1, § 402(2), M.R.S. and are to be open pursuant to § 403, and are required to have public notice, pursuant to § 406, in “ample time for 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.”

2) On July 11, 2011, starting at 6:00 p.m., Peru Board of Selectmen did hold a regular meeting at the Peru Town Office, but had not provided public notice as required by § 406.

3) During the public comment section of the meeting, a woman raised her concern about the meeting not being publicly noticed as required by Maine Statutes. The woman had a copy of the local newspaper — Rumford-Falls Times — and stated that other towns noticed their meetings in that newspaper.

Selectwoman and Secretary Hussey replied to the woman that the meeting was posted on the door of the Town Office and offered to call the woman prior to every meeting.

The woman objecting said that such notice was not adequate.

Chairman of the Board of Selectmen Tim Holland stated that he did not have any control over what the newspaper published. At the end of the discussion, Chairman Holland said he'd look into it.

4) At this time, I am uncertain as to how many meetings have been held by the Peru Board of Selectmen in the past year that have not had adequate public notice, as required by law. I am concerned that a number of decisions have been made that likely need to be revisited after adequate public notice is given.

5) Because all of the selectmen have completed the required course in Maine FOAA, and because there have been and are written complaints about irregularities and inaccuracies in the minutes of meetings and in production of documents pursuant to Maine FOAA, and because the Board of Selectmen had a cavalier, dismissive attitude toward the objections about the failure to lawfully notice the meeting, the multiple violations of § 402, et seq., are willful violations for investigation and prosecution pursuant to § 410.

6) Please accept this sworn, notarized letter as a formal request to the Attorney General to investigate and, where appropriate, prosecute the multiple violations of Maine open meeting and open record laws and to advise the Peru Board of Selectmen how to comply with the laws. If you need additional facts, or witnesses, or statements, please let me know.

Dwight E. Hines

**STATE OF MAINE
COUNTY OF OXFORD**

Before me, the undersigned authority, on this day personally appeared **Dwight E. Hines**, identified by Florida Driver's License Number **H520-165-44-307-0**, subscribed to the foregoing instrument, and upon his oath affirmed to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 12th DAY OF July, 2011.

(SEAL)

NOTARY PUBLIC IN AND FOR OXFORD COUNTY, MAINE

Commission Expires _____

July 13

Conservative group takes issue with cost of housing data

By [Susan M. Coverscover@mainetoday.com](mailto:Susan.M.Coverscover@mainetoday.com)
MaineToday Media State House Writer

AUGUSTA -- A conservative think tank says the Maine State Housing Authority wants to charge too much money to release basic financial information for a public website disclosing the cost of government.

The **Maine Heritage Policy Center** held a State House press conference Tuesday to say that a request for payroll and expenditure data from 1998 through 2010 was billed for \$8,710.

"The data we requested of the Maine State Housing Authority is no different than the data we requested of every other government agency on MaineOpenGov.org., yet their time and cost estimates to provide the data are by far, the highest we have ever been quoted," said David Crocker, director of the Center for Constitutional Government at the policy center.

By comparison, the policy center said it paid nothing for similar records it got from the Maine Turnpike Authority, Maine Public Employees Retirement System and for figures on all welfare spending. The group does pay \$100 to \$200 a year to the state and the University of Maine System for information, said Sam Adolphsen, director of the policy center's Center for Open Government.

Dale McCormick, executive director of the housing authority, said she thought the group had agreed to revise their request, which would cost considerably less. Her staff estimates gathering the data for the period between 2004-2010 would take 372 hours, a cost of \$3,710. By law, the agencies can charge \$10 an hour after the first hour of work to compile the information.

"We serve over 90,000 people each year," McCormick said. "To respond to their revised request of seven years, we have to cross out personal information on well over a half a million transactions."

Last month, the MaineHousing Board of Commissioners voted to charge the \$10 an hour fee after hearing an appeal from the policy center.

"That broad of a request feels like a fishing expedition," McCormick said. "Our board voted unanimously not to donate 10 weeks of staff time to the Maine Heritage Policy Center, an organization with a political agenda."

The policy center launched MaineOpenGov.org in 2009 by listing the salaries and benefits paid to all state workers. It has since added information, including retiree pensions, local school spending and information from some cities and towns.

Adolphsen said the group never revised its request for information from the housing authority. He said to give the public a complete picture, it's important to list both payroll and expenditures for a longer period of time.

"Our position is, that because we're putting it out for the public, we like to have as complete a picture as possible," he said. "If it really takes 800 hours to get spending data together, it can't be in very good order."

Susan Cover -- 620-7015

scover@mainetoday.com

Were you interviewed for this story? If so, please fill out our [accuracy form](#)

[Send Question/Comment to the Publisher](#)

Recommend

Be the first of your friends to recommend this.

[Tweet](#)<

Find this article at:

http://www.onlinesentinel.com/news/housing-group-bills-big-for-data_2011-07-12.html

Check the box to include the list of links referenced in the article.



STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

Paul R. LePage
GOVERNOR

14 July 2011

Right to Know Advisory Committee
State House
Augusta, ME

Dear Members of the Committee:

I want to thank you for your service to the People of the State of Maine. An open government is an honest government. Transparency is important and I believe Mainers are better off because of it.

However, there are two concerns I have that I would like the committee to look at during their review. First, we need to clarify the parameters on what really constitutes government business. We have received Freedom of Access Act requests for all grocery receipts from the Blaine House. The staff of the Blaine House conducts the shopping – it is not something I involve myself in. I understand that taxpayers have a legitimate right to know the amount of their money being spent in their house but the intimate details of our diet goes far beyond funds and into the private details of my family's life.

Second, I believe that certain people are abusing our Freedom of Access Act for political purposes. My office has received a number of incredibly broad requests that have taken hours and hours of staff time. We run the office with a very small number of staff. In fact, from what we have learned at National Governors' Association meetings, we believe it is the smallest Governor's staff in the country. While my team has diligently responded to these requests, none of the information has actually been made public by the requestor. They were made simply to gum up the work of my office and prevent us from moving initiatives forward. The \$10.00 an hour rate was added in 2003 and has not been increased since then. I hope the committee will look at the statutory rate as well as ways to combat abuse going forward.

Please do not hesitate to contact my office if you have questions on these concerns. I know we can make our access laws even better to prevent some of the abuses that have come to light lately. Thank you for your service on this important committee.

Sincerely,

Paul R. LePage
Governor



PRINTED ON RECYCLED PAPER

RIGHT TO KNOW ADVISORY COMMITTEE

DRAFT AGENDA

September 29, 2011

1:00 p.m.

Room 438, State House, Augusta

Convene

1. Welcome and Introductions
2. Updates from Subcommittees
 - Bulk Records Subcommittee
Mike Cianchette
 - Public Records Exceptions Subcommittee
Shenna Bellows
 - Legislative Subcommittee
Mal Leary
3. Discussion: How to resolve FOA request/response problems? Is there a resolution process that is fair to both requesters and public offices?
4. Other?

Adjourn

**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.

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.

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.

6. Repeal. (repealed)

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

**An Act To Implement the Recommendations of the Right To Know
Advisory Committee Creating the Public Access Ombudsman**

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

Sec. 1. 5 MRSA §200-I is enacted to read:

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

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- 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.

→ **6. Repeal.** This section is repealed June 30, 2009.

Sec. 2. Pilot project. Notwithstanding the Maine Revised Statutes, Title 5, section 200-I, subsection 1, the Department of the Attorney General may establish the Public Access Division and appoint the Public Access Ombudsman as a pilot project if funding is available.

Sec. 3. Appropriations and allocations. The following appropriations and allocations are made.

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration - Attorney General 0310

Initiative: Allocates funds for a part-time Assistant Attorney General position and general operating expenses required to carry out the purposes of this Act.

| FEDERAL EXPENDITURES FUND | 2007-08 | 2008-09 |
|--|----------------|-----------------|
| POSITIONS - LEGISLATIVE COUNT | 0.000 | 0.500 |
| Personal Services | \$0 | \$39,458 |
| All Other | \$0 | \$1,718 |
| FEDERAL EXPENDITURES FUND TOTAL | \$0 | \$41,176 |

Effective July 18, 2008

III. RECOMMENDATIONS

The Advisory Committee makes the following recommendations. Because Resolve 2005, chapter 123 authorizes the Joint Standing Committee on Judiciary to report out legislation after receiving the Advisory Committee's report, rather than permitting the Advisory Committee to submit legislation directly, and because of the time constraints, the Advisory Committee is providing its recommendations in concept draft form, which allows the Judiciary Committee to develop the language as its members determine is appropriate.

1. Permanent advisory board

The Advisory Committee recommends the establishment of a permanent advisory board on public access to records and proceedings. The membership of the board should include representatives from all branches of state government as well as all levels of government. The Advisory Committee recommended that the board be named the Right To Know Advisory Committee to make it clear to everyone concerned, especially the public, what the purpose of the entity is. The main duties of the board should include at least the following.

A. To provide guidance in ensuring access to public records and proceedings. The advisory board will work with the Ombudsman (see recommendation 2) to address general compliance issues and respond to requests for interpretation and clarification of the laws. The advisory board may make recommendations for changes in the statute to improve the laws, and may make recommendations to agencies and public officials with regard to best practices in providing the public access to records and proceedings.

B. To serve as the central source and coordinator of information about the Freedom of Access laws and the people's right to know. Rather than each agency developing their own resources from square one, the advisory board will provide the basic information about the requirements of the law and the best practices for agencies and public officials. It will 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 board, with representation from all branches and levels of government, will coordinate the education efforts by providing information about the Freedom of Access laws and who to contact for specific inquiries.

The Advisory Committee envisions this role of the permanent advisory board to include establishing a website that states 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. It should include the

contact information for agencies, as well as how to reach the Ombudsman with complaints and concerns. The website should also include, or be linked to, a list of statutory exceptions to the public records law.

C. To serve as the central resource for training and education about the Freedom of Access laws. Although each agency will want to tailor training for the specific records and meetings pertaining to that agency's mission, the advisory board can provide the core resources for the training, share best practices experiences and be responsible for establishing and maintaining on-line training as well as written question-and-answer summaries about specific topics.

D. To serve as a resource for the Judiciary Committee in its role as the review committee in examining public records exceptions in both existing laws and in proposed legislation. The review of the existing and proposed exceptions is a valuable tool in ensuring that the public's records are accessible, which is an essential factor in open government and in building and maintaining the public's trust in their government. The review process needs to be evaluated and perhaps revised to provide more information and guidance in a timely manner to the Judiciary Committee. The advisory board may choose to recommend more standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released.

It should be noted that the full range of the duties outlined here are somewhat dependent on the adoption of the Advisory Committee's recommendation to create a freedom of access Ombudsman. In order for the advisory board to function as envisioned, staff will be necessary. The Ombudsman may be able to at least partially address those needs. The Advisory Committee recommends that the Judiciary Committee not lose sight of the necessity of staffing resources.

2. Freedom of access Ombudsman

The Advisory Committee recommends the establishment of a freedom of access Ombudsman, a funded position within the Office of the Attorney General. The Ombudsman will be the link between the public and the governmental agency when there is misunderstanding, confusion or dispute over access to public records and proceedings. The Ombudsman will respond to questions, help determine what records or information must be accessible and help determine how agencies can best provide access to public records. The Ombudsman will be available to help information requestors narrow their requests to relevant and helpful documents, reducing unnecessary work and frustration on all sides of the question.

The Ombudsman will be in regular contact with the permanent advisory board (see recommendation 1 above) to help identify common misunderstandings and ambiguities in the laws. The Ombudsman will work with the advisory board to develop training and

educational sessions and materials for agencies and public officials as well as the public. The Ombudsman will also collect data about the types of questions and complaints and report that information to both the advisory board and the Legislature for use in formulating proposed changes in law and practice.

The Advisory Committee recognizes the work the Attorney General's Office has devoted to filling the problem-solving role of the Ombudsman without any additional funding. Recent events and public interest make it clear that the complete Ombudsman responsibilities are deserving of full funding. Based on the anecdotal information provided about the Freedom of Access requests received by agencies and the concerns raised by advocates, the Advisory Committee believes that funding such a position will, in the long run, lead to greater efficiencies and cost savings. Conflicts will be resolved quickly and agencies will not need to spend hour upon hour figuring out how to respond to overly-broad requests.

The Advisory Committee strongly supports the creation and funding of the Ombudsman. The Advisory Committee does not, however, believe it would be appropriate to ask the Attorney General's Office to take on any of the Ombudsman's duties without sufficient funding; the Advisory Committee does not support expanding the role of the Attorney General without additional resources.

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| Report 2007 |
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□ Establish a Public Access Ombudsman position within the Attorney General's Office

The Advisory Committee has unanimously endorsed the establishment of a Public Access Ombudsman, a funded half-time position within the Office of the Attorney General. The Committee has recommended to the Governor that funding for the position be included in the Governor's proposed fiscal year 2007-2008 budget currently being developed for presentation to the Legislature in early January. If funding for the position is not included in the proposed budget, the Advisory Committee supports the introduction of separate legislation creating the Ombudsman position.

The Advisory Committee believes that an Ombudsman is necessary to educate and assist state agencies, local governments and the public with regard to understanding Maine's Freedom of Access laws. Based on the anecdotal information provided about the Freedom of Access requests received by agencies and the concerns raised by advocates, the Advisory Committee believes that funding such a position will, in the long run, lead to greater awareness and compliance with the Freedom of Access laws and generate greater efficiencies and cost savings for state agencies asked to respond to requests for access to public records and proceedings.

The Advisory Committee has developed draft statutory language and a financial estimate for funding a half-time position. Based on the draft, an annual cost of less than \$60,000 is expected. The draft language and budget estimate is included as Appendix D. Under the proposal, the Ombudsman will be the link between the public and the governmental agency when there is misunderstanding, confusion or dispute over access to public records and proceedings. The Ombudsman will respond to questions, help determine what records or information must be accessible and help determine how agencies can best provide access to public records. The Ombudsman will be available to help information requestors narrow their requests to relevant and helpful documents, reducing unnecessary work and frustration on all sides of the question. The Ombudsman will also have the authority to issue advisory opinions. We envision that the Ombudsman will work in coordination with the Right to Know Advisory Committee to develop training and educational sessions and materials for agencies and public officials as well as the public. The Ombudsman will also collect data about the types of questions and complaints and report that information to the Governor, the Legislature and the Advisory Committee for use in formulating proposed changes in law and practice.

Ombudsman budget estimate - draft

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| AAG | | |
| Range 30 step 4 | | FY08 |
| start date | | 7/1/2007 |
| Headcount | | 0.5 |
| Personal Service | | 29,110 |
| with benefits | | 19,538 |
| PS subtotal | | 48,648 |
| All Other | | |
| travel | | 1,700 |
| dues,printing | | 3,000 |
| training | | 50 |
| telephone | | 600 |
| wan,email,computer & software | | 2,425 |
| AO subtotal | | 7,775 |
| Grand Total | | 56,423 |



STATE OF MAINE
125TH LEGISLATURE
FIRST REGULAR SESSION

*Appendix G
only*

Fifth Annual Report
of the
RIGHT TO KNOW ADVISORY COMMITTEE

January 2011

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Rep. Dawn Hill
Shenna Bellows
Karla Black
Robert Devlin
Mark Dion
Richard Flewelling
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APPENDIX G

Options for Delivery of Freedom of Access Services to the Public

Proposals for Freedom of Access Services

Submitted by the Maine Right to Know Extern Sean O'Mara for inclusion in the Maine Right to Know Advisory Committee Report on 12/2/2010.

Summary

This report outlines planned and potential means of supporting greater public access to government in accordance with the goals of Maine's freedom of access statutes. Increased knowledge and legal empowerment of the people of Maine would further the joined goals of greater access and accountability. The Right to Know Advisory Committee's current plan to accomplish this is to connect people to Maine attorneys through the Volunteer Lawyers Project. By providing volunteers and law students with the necessary training and supervision, the Volunteer Lawyers Project can provide freedom of access information to those who need it, legal representation from Maine lawyers when appropriate, and a measure of the need for such services in the state. The Volunteer Lawyers Project will work with the Maine Right to Know Advisory Committee, the Office of the Attorney General, and the Maine School of Law Extern to develop freedom of access services to the public that are similar to those being offered in other states.

Current Status of Freedom of Access Resources

The Maine Legislature, acting on the recommendations of the Maine Right to Know Advisory Committee, has made significant and sweeping improvements to the state's freedom of access laws. This process is on-going and includes: greater educational outreach to public officials, greater accessibility to agencies via online media, and the development of more uniform agency statutes.

These efforts are best complemented by increased awareness of the public's rights under the state statutes, particularly as these laws are amended. An educated public will better ensure the accountability of government officials. The Maine Right to Know website supports this process by providing answers to what rights are delineated in the law, but it is less effective at the point of assisting individuals with specific questions or inquiries.

The exact definition of what are "reasonable translation costs" of public records, what constitutes a "reasonable period of time" to acknowledge receipt and produce records for freedom of access requests, and questions regarding technology use in meetings are among the issues that have yet to be fully resolved. The specific situations that often form the basis of statutory interpretation are usually not easily navigated by a layperson. Moreover, an average citizen might not press his or her statutory freedom of access rights due to a lack of confidence or familiarity with the legal system.

The need for answers is illustrated by letters from constituents from around the state received by the Office of the Attorney General. While responses to these constituent letters addressing the general state of the law are helpful, the office is limited to serve only as an educational resource for these individuals.

What Other States are Doing

To address these public concerns, a few law schools in other states have stepped into the gap. For over a year, the Chicago Kent College of Law has operated the Center For Open Government. <http://www.kentlaw.edu/academics/clinic/cog.html>. This center responds to the calls and e-mails of citizens of Illinois. The inquiries are researched and

responded to by the three law students in the program, with all responses reviewed by the program's director.

This program was started by the efforts of two civil rights attorneys, who provided the money for the program's budget, while the school provided the overhead. These two attorneys have taken on 4-5 cases that came through the program in the year since the program started. The law students do not directly represent clients, although they are looking into that option. Currently, the law students do some of the research and help to file claims. The program's director, Terrance Norton, indicated that the steady number of inquiries and applications for representation has been increasing, and he expects them to increase more as awareness of the project grows. Journalists have made a significant number of these inquiries and applications.

In Illinois, there is also a Public Access Counselor, who writes decisions on freedom of access issues, which are binding unless appealed to the court system. Similarly, Yale Law School has created an externship where students work with media attorneys to prepare state access cases or federal freedom of information requests (FOIA) and appeals. Other schools, such as the Columbia University School of Law, have hosted open government workshops in cooperation with federal and state committees working on increased access to public information via technology.

Planned Solution for the Problem

What follows is a description of the planned solution currently being developed, as described and approved by the Maine Right to Know Advisory Committee.

In collaboration with the Volunteer Lawyers Project and the Office of the Attorney General, the Maine Right to Know Advisory Committee recommends

establishing a service to assist individuals with freedom of access issues. This service would help individuals request documents, gain access to meetings, and appeal any denial of those requests. The goal of the proposed services is to provide increased governmental accountability through educating and assisting the public with their rights under the Maine freedom of access laws.

The plan is to advertise freedom of access assistance through the Volunteer Lawyers Project. Individuals that call or send a letter, or who simply need more information about their rights under the freedom of access laws, will have information sent to them, or their questions will be forwarded to either the Attorney General's Office or to the Maine Right to Know Extern at the University of Maine School of Law. If the person calling needs legal representation in appealing a denial of access, then the Volunteer Lawyers Project will refer the person to an attorney, which necessitates the involvement of members of the state bar. Currently, participation is being sought from attorneys who are willing to consider referrals from the Volunteer Lawyers Project involving freedom of access issues. The freedom of access laws provide that attorney's fees can be awarded in certain circumstances. The Volunteer Lawyers Project has agreed to assist people up to 200% of the federal poverty guidelines in order to fit within its eligibility requirements.

The Right to Know Advisory Committee anticipates that some legal representation will be needed as this is a developing area of the law. Changes are made each year dealing with fresh challenges, such as electronic meetings and evolving privacy concerns that affect every Maine citizen. Before fundraising from government and private sources can be successful, the Advisory Committee must assess the demand for this sort

of representation. Assuming attorneys are available, the Volunteer Lawyers Project will take requests for assistance and record all inquiries, both those in which assistance was granted and those beyond 200% of the poverty level. If the number of calls exceeds five per month, the Voluntary Lawyers Project will need additional funding to support the additional resources required.

If enough attorneys respond to the request for participation, the Maine Right to Know Extern will work with the Voluntary Lawyers Project to set up the intake process and training to provide services as soon as possible. If too few attorneys respond, then additional communications to attorneys who work in related fields, including outreach at Maine Bar Association events, could be undertaken. If the need is significant, or if necessary attorney participation is not achieved, additional options can be pursued next year through applications for grant funding.

Other Potential Solutions

What follows are four potential options for programs that could take the place of or provide additional freedom of access services in the future depending on the nature of the need and available funding.

Option 1: Freedom of Access Clinic

The University of Maine School of Law could create a program similar to that of Chicago-Kent. This option would provide citizens with the possibility of representation through associated attorneys, as well as responses to their inquiries researched by the law students and reviewed by a supervisor. If money can be raised from members of the local bar, or from another source, then the clinic could have a full-time director and secretary

like Chicago-Kent's. Mr. Norton estimated the yearly budget at Chicago-Kent's clinic to be approximately \$100,000.

If that level of funding is available, then the clinic could be an expansion of an existing clinic. The supervision could be provided by an attorney, a designated professor, or a supervisor in the existing clinic. Students could be authorized as student-attorneys to represent some litigants in their appeals depending on the need.

Option 2: Freedom of Access Externship

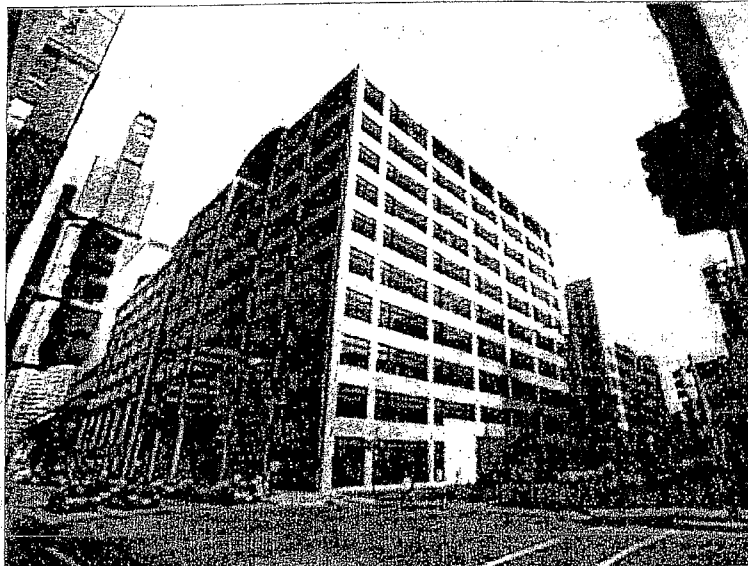
In addition to the current externship with the Right to Know Advisory Committee supervised by the Office of the Attorney General, an externship with a participating member of the local bar could be created to facilitate student representation of freedom of access requests. This option would not require additional funding, but would require a local attorney or attorneys to supervise the student-lawyer. This externship would be different than the current externship in that it would be capable of offering legal advice or assistance directly to the public.

Option 3: Freedom of Access Information Service

A member of the local bar or a law professor could supervise a law student who would conduct research and respond to requests by members of the public over a designated e-mail account. The e-mail could be listed on the Maine Right to Know website and made publicly available, with a law student drafting responses. This option would be inexpensive and would provide people with answers to their questions, but would not provide them with legal representation. This might be helpful for those who have difficulty understanding their rights under the law. Due to potential liability, this position might also be restrictive in the ability of the student to offer legal advice.

Option 4: Freedom of Access Ombudsman

The University of Maine School of Law could host a statutory freedom of access ombudsman, with student support. The position of ombudsman currently exists in a few states including Illinois and Indiana. The ombudsman would not provide legal representation but could either write binding decisions, as in Illinois, or could simply be an influential expert whose opinions do not carry legal weight but might help resolve freedom of access disputes.



Chicago-Kent College of Law runs an open government clinic.

Law schools step in to help maintain sunshine

Clinics spring up to help those who want access to government records and meetings

By MIRANDA FLESCHERT

When the District of Columbia denied WTOP Radio reporter Mark Segraves' Freedom of Information Act request for mayoral expense and travel records in February, the investigative reporter would have welcomed some assistance in appealing the denial.

"Recently it has become apparent that there is a need to litigate FOIA more now than there was before, but there just isn't the money to do that," Segraves said.

As circulations decrease and newsroom and radio station budgets dwindle, it's become increasingly difficult for news organizations to pursue what can often be protracted and expensive disputes over refused public records requests. In response, a few law schools have stepped in to guide citizens and groups through the open records process.

"Other institutions have to pick up the slack and one of the alternatives is NGOs and law schools," said Terrance A. Norton, the director of an open

government clinic at Chicago-Kent College of Law.

A full-blown clinic is already up and running at Chicago-Kent College of Law. The Center for Open Government — the brainchild of Clinton Krislov, an adjunct professor and plaintiffs' class-action attorney — is a part of the school's clinical education program that helps citizens gain access to local and state government records and proceedings.

Chicago-Kent law students, with the help of supervising professors, will represent records requesters free of charge. The center will primarily handle cases dealing with violations of the state's open meetings and public records laws, which were revised earlier this year after a spate of recent state scandals that showed a lack of government transparency, according to the law school's press release.

"If laws are there for our benefit, we should be able to get all information necessary to find out what appointed and elected officials are doing with our tax dollars," Norton said.

Though the center just opened in September, students already have several cases

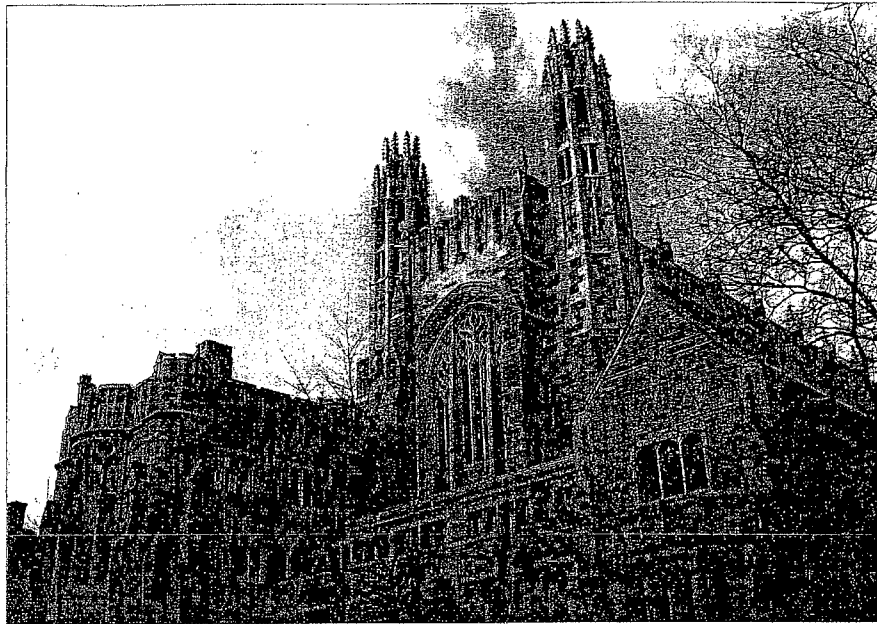
in the works. One woman from a local suburb sought help from the center after the village board of trustees, in a closed session, laid off 11 employees including her husband, a firefighter. The center will help her litigate what it argues is a violation of the state Open Meetings Act. Another client is a man seeking access to financial records from the Illinois High School Association to determine whether there are gender disparities in the funding of sports programs. IHSA, like the National Collegiate Athletic Association, has claimed it is not a public body and therefore not subject to open records laws.

Norton, a former Chicago-Kent professor who has handled open government cases for more than a decade, says that in addition to supplementing the open records lawsuits filed by media organizations, the clinic will close a gap in the nonprofit world. Eventually, it could expand to take on other issues, like whistleblower cases.

There are lawyers for minority groups, for those who are evicted from their homes, the developmentally disabled, victims of age discrimination, "but no lawyers to represent citizens who want to play a proper role in democracy, to move the levers of power," Norton said. "I think there is a need for citizens to have representation in whatever context."

The concept is promising, said David Tomlin, associate general counsel for the Associated Press. "Everyone is concerned now with pressure on budgets, and on personnel and staff time, that news organizations are going to do less litigating and less pursuing legal remedies in the area of First Amendment, open records and open meetings," he said. "It is clear that creative solutions are called for and this could be one of them."

Though Chicago-Kent's legal clinic is currently the only of its kind, other schools are also preparing students to litigate public records cases. At Yale Law School, students in its practicum on media freedom, which is offered as an externship, are paired with practicing media lawyers and prepared to handle both state open government and FOIA cases at the federal level. "We are hoping it will be a really important institution for promoting media access to government information," said Jack M. Balkin, Yale's Knight Professor of Constitutional Law and the First Amendment and an



Yale Law School's program pairs students with lawyers to handle open government cases.

adviser to the practicum.

Yale law student Nabilha Syed developed the idea for the practicum with a colleague after participating in a Yale clinic on balancing civil liberties and national security after 9/11. Balkin helped establish the program and connect students with media-law mentors.

"I care about the growing culture of secrecy in the law and this is what we need to go after. That was the push we needed to create the project," Syed said.

David Schulz, of Levine, Sullivan Koch & Schulz LLP in New York, supervises Syed's work and says that all types of journalists, from the solo blogger to the mainstream media, have shown an interest in working with the law students to resolve their disputes.

"The Yale program is very encouraging because there is a huge need for legal expertise as more and more journalists are working as independent bloggers or for online sites where they lack the resources of a larger organization," Schulz said.

As with Chicago-Kent's program, Yale's externship practicum is new this school year. Yet Syed has already been involved in four cases, including a whistleblower's appeal contesting a motion to seal exhibits in the case. She hopes other universities follow suit and get students involved in FOIA issues.

"There is a pressing need for law schools to take up this mantle," Syed said.

William G. McLain, an associate pro-

fessor at the University of the District of Columbia's law school, agreed that law students can play an important role in FOIA litigation.

McLain first introduced his students to public records issues during a class on disaster and the law that dealt with the aftermath of Hurricane Katrina, including examining the issues surrounding the drowning deaths of inmates at a prison in New Orleans.

McLain's students filed a FOIA request with the District of Columbia's corrections department to find out whether Washington was any better prepared if a similar disaster occurred. The request was denied, citing homeland security concerns, and the appeal is pending in the D.C. Superior Court.

"These agencies [in the district] know that they can just stiff requesters and they'll just go away because they don't know what else to do. There is a need for representation and someone needs to step in and fill it," McLain said.

So McLain is preparing to meet the need and open a full-fledged public records clinic. Though the plan is still in its formation stage, he anticipates a strong interest from both colleagues and students — and estimates that given the district's high rate of records denials, there could be more cases than the clinic can even handle.

"It's really an idea that's time has come and if it hasn't come, it ought to immediately," McLain said. ♦

Ombudsman and other resources

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| Alaska | Ombudsman | The State's Legislative ombudsman may be a source of help for citizens denied access to public records by state agencies. | AS 24.55.200 |
| Arizona | Ombudsman | Complaints regarding the actions of an agency can be made to the Office of the Ombudsman-Citizens Aide. In response to a complaint, the Ombudsman-Citizens Aide has the power to investigate the administrative acts of agencies and make recommendations to the governor, the legislature and the appropriate prosecutor | AZ 41-1371 to -1378 |
| Connecticut | Commission (Freedom of Information Commission) | The State's Freedom of Information Commission has an ombudsman program which involves the assigning of a staff member to a FOIA appeal to act as a liaison between the parties, and attempt to effect a settlement. Whenever a requestor has been denied access the 5 members of the Freedom of Information Commission hold hearings. The Commission conducts training sessions for members of public agencies. The Commission has the power to investigate allegations, hold hearings, administer oaths, examine witnesses, receive oral and documentary evidence, subpoena witnesses, and require the production of items relevant to the investigation. | Conn Gen Stat§ 1-200 to 1-259 |
| Florida | Mediation (AG) | The Florida Legislature has created a Voluntary Mediation Program within the Attorney General's Office to mediate disputes involving access to public records. The Attorney General's Office is required to employ mediators to mediate such disputes, recommend to the Legislature needed legislation regarding access to public records, and assist the Department of State in preparing training seminars record public records access | See Fla. Stat. § 16.60 (2000) |
| Georgia | Mediation (AG) | The Office of the AG has established an informal mediation program whereby citizens requesting information can submit complaints and ensure that local governments fulfill obligations under the act. | |

Ombudsman and other resources

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| Hawaii | Ombudsman | The ombudsman, who is appointed by the legislature, has jurisdiction to investigate the administrative "acts of agencies." | Haw. Rev. Stat. § 96-5 |
| Illinois | Ombudsman (Public Access Counselor - AG) | The Public Access Counselor established in the Office of the Illinois Attorney General has jurisdiction to resolve and mediate FOIA disputes. A public body that asserts that records are exempt must, within the time periods provided for responding to a request, provide written notice to the requester and the Public Access Counselor of its intent to deny the request in whole or in part. The Public Access Counselor will, then, decide whether those exemptions are properly invoked. The Public Access Counselor may also issue binding opinions, which are considered final decisions of an administrative agency, for purposes of administrative review under the Administrative Review Law. | 5 ILCS 140 |
| Indiana | Ombudsman (Public Access Counselor) | The Public Access Counselor is appointed by the Governor for a term of 4 years. The PAC is responsible for administering a program to train public officials, conduct research, prepare interpretive and educational materials in cooperation with the AG, respond to informal inquiries, issue advisory opinions, and make recommendations to the general assembly concerning ways to improve public access. | Ind. Code § 5-14-4 |
| Iowa | Ombudsman | The office of the Citizen's Aide/Ombudsman has statutory authority to investigate any administrative action of any agency including compliance with Iowa's Open Record Law. (Agency = Any court or judge or appurtenant judicial staff; members, committees, or permanent or temporary staffs of the Iowa general assembly; the | Iowa Code § 2C.9(1) |

Ombudsman and other resources

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| | | | governor of Iowa or the governor's personal staff; or any instrumentality formed pursuant to an interstate compact and answerable to more than one state.) | |
| Kansas | FOA officer | | Each public agency is required to appoint a freedom of information officer to assist the public with KORA requests and disputes. The AG can investigate violations of KORA. | K.S.A. 45-226 |
| New Jersey* | Commission (Government Records Council) | | Government Records Council established pursuant to OPRA hears complaints. The Council is established in the Department of Community Affairs and consists of the Commissioner of Community Affairs or their designees, the Commissioner of Education or their designee, and 3 members appointed by the Governor with at least one member being of a different political party. The Government Records Council established an informal mediation program to facilitate the resolution of disputes regarding access to government records. The AG acts as attorney to the Government Records Council. | N.J.S.A. 47: 1A-7 |
| New York* | Commission (Committee on Open Government) | | The Committee on Open Government is responsible for overseeing and advising with regard to the Freedom of Information, Open Meetings, and Personal Privacy Protection Laws. Specific responsibilities of the Committee under FOI involve furnishing advisory opinions, both oral and written, to any person and promulgating rules and regulations relative to the procedural aspects of the law. The Open Meetings Law requires the Committee to provide advice to any person. Advisory opinions are also prepared concerning the Personal Privacy Protection Law at the request of persons who are subjects of records covered by the law, as well as at the request of state agencies seeking to comply with the statute. | Public Officers Law, Art. 6, 7, 6-A |

Ombudsman and other resources

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| North Dakota | AG opinions | <p>.Any interested person may request an AG's opinion to review a written denial of a request for records. If the AG issues a written opinion concluding that a violation has occurred, the public entity has 7 days to disclose the record, to issue a notice of a meeting that will be held within a reasonable time to correct the violation, or to take steps to correct any other violation.</p> | N.D.C.C. § 44-04-21.1 |
| Oklahoma | AG opinions | <p>The AG will issue opinions on specific questions concerning the application of the Act. Once opinions are issued, covered agencies must act consistent with the opinion.</p> | 51 Okla. Stat. §24A.1 et seq. |
| Pennsylvania | Commission (Office of Open Records) | <p>The new Right to Know Act took effect January 1, 2009.</p> <p>The Act mandates the creation of an Office of Open Records in the Department of Community and Economic Development. Section 1310(a). The Office is led by an Executive Director who is appointed by the Governor for a term of six years (with a maximum of two terms) and who may appoint attorneys to act as appeals officers as well as other staff as appropriate. Section 1310(b).</p> <p>The Office of Open Records has the following responsibilities:</p> <ol style="list-style-type: none"> 1. Provide information relating to the implementation and enforcement of the Act. 2. Issue advisory opinions to agencies and requesters. 3. Provide annual training to agencies, public officials and public employees. 4. Provide annual, regional training courses to local agencies, public officials and public employees. 5. Assign appeals officers to review appeals of decisions by commonwealth and local agencies, and issue orders and opinions. | Act 3 of 2008, §1310 |

Ombudsman and other resources

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| | | <p>The Office must retain attorneys to serve as appeals officers and review appeals and, if necessary, hold hearings on a regional basis.</p> <p>6. Establish an informal mediation program to resolve disputes under the Act.</p> <p>7. Establish an internet website with information relating to the Act, including information on fees, advisory opinions and the name and address of all open records officers in the Commonwealth.</p> <p>8. Conduct a biannual review of fees charged under the Act.</p> <p>9. Annually report on "its activities and findings" to the Governor and General Assembly. This report shall be "posted and maintained" on the Office's Web site.</p> | |
| Utah | Commission (State Records Committee) | State Records Committee's duties include: meeting once every 3 months, reviewing and approving retention and disposal of records, and hearing appeals from denials of access to public records. The AG provides counsel for the records committee and reviews proposed retention schedules. Any individual may appeal the decision of the State Records Committee or the governmental entity's decision by filing a petition with the District Court. | Utah Code Ann. § 63G-2-501 et seq. |
| Virginia | Commission (Virginia Freedom of Information Advisory Council) | The Virginia Freedom of Information Advisory Council has a staff that answers inquiries on a formal and informal basis, but does not perform any ombudsman function with regard to any public body. | Va. Code Ann. § 2.2-3713(A) |
| Washington | AG opinions Ombudsman | If a state agency denies a person an opportunity to inspect or copy a public record, the individual may request the attorney general's office to review the matter and provide a written opinion. Opinions are not binding but may be persuasive. The Attorney General's | RCW 42.56.530 |

Ombudsman and other resources

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|---------------|--|--|-------------------------|
| | | Office has an "open government ombudsman," who is available to consult on and assist with public records and open meetings issues. http://www.atg.wa.gov/OpenGovernment/Ombudsman.aspx . | |
| West Virginia | | State agencies and other governmental agencies may request the AG to render an official opinion regarding WV FOIA. | W.Va. Code § 29B-1-5(1) |
| Wisconsin | | Any person can request advice from the AG as to the applicability of the records act under any circumstances. | Wis. Stat. § 19.39 |

Source: www.rcfp.org

G:\STUDIES 2011\Right to Know Advisory Committee\Ombudsman and other resources.doc (9/29/2011 7:46:00 AM)

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RIGHT TO KNOW ADVISORY COMMITTEE

NOTICE OF PUBLIC HEARING: 9:00 AM FRIDAY, OCTOBER 14, 2011 **Room 438, State House, Augusta, Maine**

Bulk Records Subcommittee: Key Policy Issues and Questions

The Bulk Records Subcommittee of the Right to Know Advisory Committee is seeking input from State and municipal government agencies and other interested parties regarding the application of the freedom of access laws to requests for bulk data. The Subcommittee has identified several key policy issues and questions relating to bulk record and is soliciting comments on the questions below from governmental entities and others who are affected by bulk data requests.

The Bulk Records Subcommittee will hold a hearing to receive public comment on these issues on Friday, October 14th at 9:00 am in Room 438, State House, Augusta, Maine. You are also invited to respond to any of the questions below in writing. Please submit written comments through staff: margaret.reinsch@legislature.maine.gov or colleen.mccarthyreid@legislature.maine.gov. For more information, contact staff at (207) 287-1670.

1. What is bulk data and how should it be defined?
2. What is the appropriate method of determining the cost that a requestor must pay for bulk data?
3. Should a requestor of bulk data be entitled to the records in the format and type of access requested? Should a distinction be made between a requester seeking access to records and a requester seeking ownership of records?
4. Should the law distinguish between bulk data requests of public records for commercial purposes versus requests for noncommercial purposes?

<http://www.maine.gov/legis/opla/righttoknow.htm>

RIGHT TO KNOW ADVISORY COMMITTEE

DRAFT AGENDA

November 17, 2011

1:00 p.m.

Room 438, State House, Augusta

Convene

1. Welcome and Introductions
2. Citizen's Guide Draft
Diana DeJesus, RTK AC Law School Extern
3. Updates from Subcommittees, Subcommittee recommendations
 - Bulk Records Subcommittee
Mike Cianchette
 - Legislative Subcommittee
Judy Meyer
 - Public Records Exceptions Subcommittee
Shenna Bellows
4. Other?

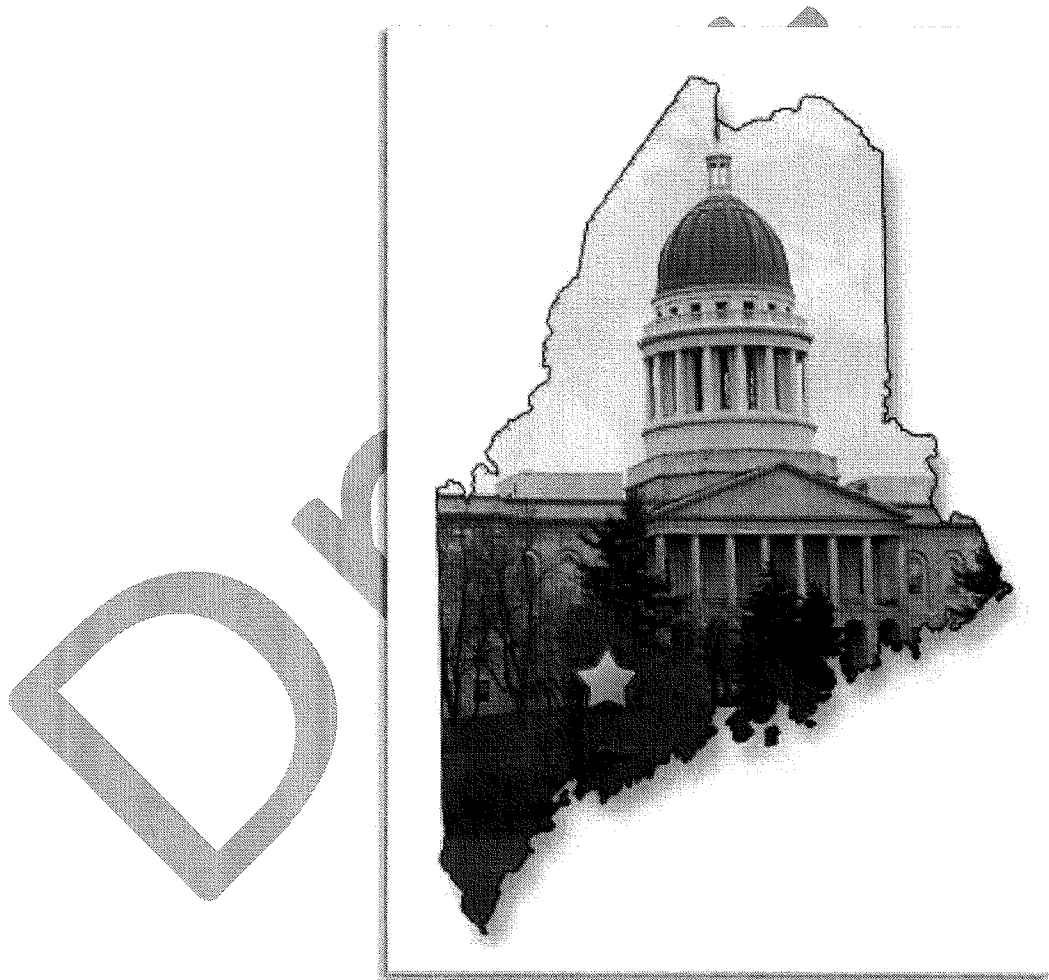
Adjourn

Scheduled meetings:

Thursday, December 8, 2011, 1:00 p.m., Right to Know Advisory Committee

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A Citizen's Guide to Using The Maine Freedom of Access Act



Maine Right-To-Know Advisory Committee

2011

www.maine.gov/foaa

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Introduction

Maine Freedom of Access Act (“FOAA”):

The Purpose



The public’s right to information about government activities lies at the heart of a democratic government.

The Maine Freedom of Access Act (“FOAA”) grants the people of this state a broad right of access to public records while protecting legitimate governmental interests and the privacy rights of individual citizens. The act also ensures the accountability of the government to the citizens of the state by requiring public access to the meetings of public bodies. Transparency and open decision-making are fundamental principles of the Maine Freedom of Access Act, and they are essential to ensuring continued trust and confidence in our government.

Open government is good government and the state is committed to ensuring and protecting your “right to know.”

To review the Freedom of Access Law, go to <http://www.maine.gov/foaa/law/index.htm> .

Chapter 1: Freedom of Access Act: An In-Depth Review

What is the Freedom of Access Act (“FOAA”)?

It is a Maine state statute that is intended to open the government of Maine by guaranteeing access to the “public records” and “public proceedings” of state and local government bodies & agencies.

FOAA does NOT apply to federal agencies operating in Maine or to federal government records. The “Freedom of Information Act,” a similar but different federal statute, applies to the federal government. This federal statute does not apply to state or local government bodies, agencies, or officials.¹

Elected Officials and the Freedom of Access Laws

As of July 1, 2008, elected officials are obligated to complete training on Freedom of Access laws. The training, which must be completed less than 2 hours, includes instruction in:

- General legal requirements when dealing with public records and public proceedings
- Procedures and requirements regarding complying with a request for a public record
- Penalties and other consequences for failure to comply with the law

The elected officials that are required to take the Freedom of Access training include:

- The Governor
- Attorney General, Secretary of State, Treasurer of State, and State Auditor
- Legislators elected after November 1, 2008
- Commissioners, treasurers, district attorneys, registers of deeds, registers of probate, and budget committee members of any county
- Municipal officers, clerks, treasurers, assessors, and budget committee members of municipal governments
- Officials of school units and school boards
- Officials of regional or other political subdivisions, including officials of water districts, sanitary districts, hospital districts, transit districts, or regional transportation districts

Once training is complete, elected officials certify the Freedom of Access training by

- Submitting a written or electronic record confirming that the training was completed
- Record will be available to public, must be kept by the elected official or filed with the public entity to which the official was elected.²

¹ Text of Freedom of Information Act can be found at 5 U.S.C. § 551 et seq., at <http://www.usdoj.gov/oip/foiastat.htm>.

² See Appendix A for sample training completion form.

Penalties for Failure to Comply with Freedom of Access Laws

If a state government agency or local government entity whose officer or employee commits a willful violation of the Freedom of Access laws, he or she may be held liable for a civil violation, which could result in a fine of \$500.³

No criminal penalties exist for failure to comply with a request for public records. If, however, there is an intentional removal, alteration, or destruction of documents, such act is a Class D crime.⁴

Enforcement of Freedom of Access Laws

Any aggrieved person may appeal to any Superior Court⁵ in the state to seek relief for an alleged violation of Freedom of Access Act.⁶

In addition, the Office of the Attorney General or the District Attorneys may bring an enforcement action seeking penalties if the alleged violation is willful.⁷

³ 1. M.R.S.A. § 410.

⁴ 1. M.R.S.A. § 452.

⁵ See *Appendix B* for Superior Court Directory

⁶ 1. M.R. S. A § 409(1).

⁷ 1. M.R. S. A. § 410.

Chapter 2: Requesting Public Records

Requesting a Public Record: The Basics

- What exactly IS a “public record?” A public record is
 - Written, printed, or graphic matter, or electronic data with information
 - Either directly or after a translation into a visual or auditory format
 - In possession of a state entity or public official
 - Used in connected or relating to a public or governmental business
- Who can request a public record?
 - Per the language of the Freedom of Access Act (“FOAA”), “every person” has the right to inspect and copy public records, whether you be a citizen of Maine or not.⁸

You Want to Request a Public Record: What do you do?

- **Step 1:**
 - Determine which public agency you want to request from.
 - Examples include: Dept. of Health and Human Services, Office of the Governor, and Office of Attorney General. See *Appendix A* for a complete list of contacts.
- **Step 2:**
 - In what form will you make your request? If in writing – which is NOT mandatory – make sure to:
 - **Be specific**- include the time frame, subject of record, etc. See *Appendix B* for a sample FOIA written request.
 - Here is an example: What if you want more information about active landfills around your home that accepts wood wastes. How do you request?

| | Too broad | Too narrow | Reasonable | Exact |
|------------------------|---|---|---|--|
| Written Request | <i>“All records on landfills”</i> | <i>“All records identifying landfills within 20 miles of 147 Main Street in Augusta.”</i> | <i>“All landfills in Augusta.”</i> | <i>“All landfills in Augusta that only accept wood waste.”</i> |
| Possible Issues | -Fees too high -Agency may be unable to locate request -Too vague | -Agency unable to locate records with that specific data | -may have more records, but still a narrower search | -better chance to locate file with exact request language |

⁸ See 1. M. R. S. A. § 408 (1).

You Requested Public Information: What Happens?

- **Step 1: Fees**
 - No initial fee for submitting the FOAA request and no fee to inspect records.⁹
 - If you would like to *copy* records, no standard rate is set by the FOAA; an agency may charge a “reasonable fee.”¹⁰ Fee amounts include
 - Time spent to
 - Retrieve
 - Search
 - Compile or
 - Redact confidential information
- **Step 2: Determining fee amount**
 - Public agency **MUST** prepare an estimate, which may include the following charge of \$10 after the 1st hour for staff time, *per request*. Further breakdown includes
 - \$20 or more- public agency **MUST** notify you before proceeding
 - \$100 or more – public agency may require costs in advanced.¹¹
- **Step 3: Determine if unable to pay fee amount**
 - A public agency may, but not required to- waive part or all of the total fee IF
 - Indigent¹²
 - Release of public record is in public interest because it will likely¹³ contribute to public understanding of how government works¹⁴
 - Not primarily in commercial interest of the requestor¹⁵

What Happens After You Made Your Request? Do You . . . ?

- *Receive acknowledgement of your request from the agency?*
 - Yes, within a “reasonable time.”
- *Have to provide clarification for request, if asked?*
 - Yes. An agency or official may ask for clarification concerning your request.
- *Have to state why you want a certain record?*

⁹ 1 M.R. S. A. § 408(3)(D).

¹⁰ 1. M.R. S. A. § 408 (A).

¹¹ 1. M. R. S. A. § 408(4) & (5)

¹² 1. M. R. S. A. § 408(6)

¹³ Id.

¹⁴ Id.

¹⁵ Id.

- No. Even though an agency is not prohibited from asking, you are NOT required to provide a reason and you CANNOT be denied solely for that reason.

The Public Agency Has Your Request: What Happens?

- Agency is to make the record(s) available “within a reasonable time.”
- You can schedule time for your inspection, translation, copying *so long as*
 - Within regular business hours
 - Do NOT affect regular daily activities
- You can be denied your request – in whole or in part – within **five (5)** working days of the request.¹⁶
- For public records that are a mix of public and private information, the agency can
 - Decide if record(s) has any confidential information that needs to be redacted or blackened out OR
 - Deny public access to the document
- Agency is NOT required to prepare reports, summaries, or contemplations of public records

You have been denied your request: How Do You Appeal?

- Step 1: Was your request a public record?
 - Under the FOIA, certain documents are NOT public record. Examples¹⁷ include
 - Those designated by statute,
 - Documents under legal privilege (such as an attorney-client privilege),
 - Medical records, and
 - Juvenile records
- Step 2: File a written Notice of Appeal
 - If you are unsatisfied with an agency’s decision to withhold a record, you can file, **within five (5) working days**, a written notice of appeal to any Maine Superior Court. See a list of superior courts in *Appendix C*.

Other General Points:

- *Can you submit a “standing request?” If so, does the agency have to honor it?*
 - A standing request – request that certain reports be sent to you automatically each month- are NOT honored.

¹⁶ 1 M. R. S. A. 409(1)

¹⁷ To determine if a record is public, use the searchable tool at <http://www.mainelegislature.org/legis/foa/>.

- Agency is only required to make available the request on the date of the request. A new request for any additional records is required.
- *Can you ask a public official about my record?*
 - You may ask a public official about a record, but he/she are NOT required to explain or answer questions about public records.
 - Under FOAA, officials are ONLY required to make records available for inspection and copying
- *Can you request to look at a public official's email?*
 - Any record maintained by an agency or official can be public, whether in electronic form or hand-copy form
 - Email(s) is/are considered a public record IF
 - In possession of
 - Agency or public official
 - Political subdivision or
 - Custody of an association
 - Where membership is exclusively made up of one or more of any of the abovementioned entities
 - Has been received or prepared in connection for public or governmental business OR
 - Contains information relating to the transaction of governmental business, AND
 - Not confidential or an exemption under the FOAA.¹⁸

¹⁸ 1 M. R. S. A. 402(3).

Chapter 3: Public Proceedings

What is a “public proceeding?”

- The “transactions of any functions effecting any or all citizens of the State,” and applies to
 - Maine Legislature and its committees and subcommittees;
 - Any board/commission of state agency or authority, including University of Maine and the Maine Community College System;
 - Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;
 - Membership meetings of any association – members comprised of counties, municipalities, school districts, other political/administrative subdivisions, or their boards, commissions, agencies or authorities; and
 - Any advisory organization established, authorized or organized by law, resolved by executive order¹⁹

If it is a public proceeding, what happens?

- Requirements
 - Need to be open to the public AND
 - Any person must be permitted to attend²⁰
- Minutes
 - Not required under FOAA for public agency or body to keep running minutes; BUT
 - Required to
 - Keep written record of every decision that involves conditional approval or denial of application, license, certificate or permit; AND
 - Every decision that involves the dismissal or refusal to renew contract of any public official, employee or appointee²¹

¹⁹ 1 M. R. S. A. § 402.

²⁰ 1. M. R. S. A. § 403.

²¹ 1. M. R. S. A. § 407 (1) & (2).

- *If “adjudicatory proceeding”- as defined in Maine Administrative Procedure Act-
 - Need to compile that complies with statutory specifications, including recording in a form that allows for transcription.²²
 - If minutes provided, must be
 - Made promptly AND
 - Shall be open to public inspection²³
 - Notice
 - Required for all public proceedings if includes a meeting of a body or agency of three (3) or more persons;
 - Must be given in “ample time” to allow public attendance AND
 - Must be disseminated in a manner reasonably calculated to notify the general public in the area where the public proceeding will be held²⁴
 - Emergency Meeting
 - Notice requirement is still needed;
 - Must be provided to local representative of media whenever practicable
 - Notice must include
 - Time
 - Location of meeting AND
 - Be provided by same – or faster – means used to notify the members of the public body or agency hosting the public proceeding²⁵

When is a public proceeding considered closed?

- Executive sessions – or closed public proceeding meetings – are permitted IF
 - Voted on specified subjects
 - After a public recorded vote of 3/5 of the members present and voting²⁶
- Executive sessions are **limited** to what can be discussed.
 - Examples include
 - Discussions regarding suspension or expulsion of a student;
 - Certain employment actions;
 - Acquisition, use or disposition of public property;
 - Consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and

²² 5 M. R. S. A. §§ 8002 (1) and 9059.

²³ 1 M. R. S. A. § 403.

²⁴ 1 M. R. S. A. § 406.

²⁵ 1 M. R. S. A. § 403.

²⁶ 1 M. R. S. A. § 405 (1)-(5).

²⁷ See 1 M. R. S. A. § 405 (6) for a full list of permitted deliberations within an executive session.

- Discussion of documents that are confidential by statute
 - Prohibited from giving final approval to²⁸
 - Any ordinance
 - Orders
 - Rules
 - Resolutions
 - Regulations
 - Contracts
 - Appointments, or
 - Other official actions
- If improper business has been conducted during an executive session
 - Any person may appeal to any Maine Superior Court.
 - If the court finds the body or agency acted illegally
 - Action taken by the body or agency will be declared **null and void**
 - Officials responsible will be subject to the penalties provided in the Act²⁹

If you decide to attend a public meeting, can you...?

- Record the public proceeding?
 - Yes. The FOAA allows for individuals to make written, taped or filmed records of a public proceeding or to broadcast it live as long as it doesn't interfere with the orderly conduct of the proceedings.³⁰
 - Body or agency having the public proceeding can make reasonable rules or regulations to govern the recording activities so long as they do not defeat the purpose of FOAA.³¹
- Speak at the public meetings?
 - It depends. The FOAA *does not* require public participation at open meetings. If public participation is permitted, public body or agency may adopt reasonable rules to ensure meetings are conducted in a fairly and orderly manner
 - Example: A rule allowing that same amount of time to each person willing to speak

²⁸ 1 M. R. S. A. § 405(2).

²⁹ 1 M. R. S. A. § 409 (2).

³⁰ 1. M. R. S. A. § 404.

³¹ Id.

Chapter 4: Right-to-Know Advisory Committee

What is the Right-to-Know Advisory Committee?

The RTKAC³² is an on-going advisory council

- With oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's Right of Access Laws
- Created to serve as resource and advisor about Maine's FOAA

What are the duties of the RTKAC?

- Specific duties include
 - Providing guidance in ensuring access to public records and public proceedings;
 - Serve as central source and coordinator of information about FOAA
 - Support provision of information about public access to records and proceedings via the Internet;
 - Serve as resource of support training and educating about the FOAA; and
 - Report annually to discuss the public's access to proceedings and records to
 - The Governor
 - Joint Standing Committee on Judiciary; and
 - Chief Justice of Supreme Judicial Court

Who serves on the RTKAC?

The RTKAC is comprised of thirteen (13) members, each with different terms. The members include³³:

- Senator from Joint Standing Committee;
- Representative of municipal interests;
- Representatives of school interests;
- Representative of newspaper publishers

³² The Maine Right-to-Know Advisory Committee was created by Public Law 2005, chapter 631.

³³ See 1 M. R. S. § 411. *Appendix D* for a list of current members.

Draft
Appendix

| Department | Contact | Phone | TTY | Address | City | ZIP Code |
|------------|---------|-------|-----|---------|------|----------|
|------------|---------|-------|-----|---------|------|----------|

Draft

Appendix A: FOAA State Contacts

| | | | | | | |
|---|----------------------------|----------|--------------|---|-----------|-------|
| <u>Administrative and Financial Services -</u> <u>Office of the Commissioner</u> | <u>David Emery</u> | 624-7800 | 888-577-6690 | Cross Building | Augusta | 04333 |
| <u>Administrative and Financial Services -</u> <u>Bureau of Alcoholic Beverages and Lottery Operations</u> | <u>Tim Poulin</u> | 287-6750 | 888-577-6690 | 10 Water Street | Hallowell | 04347 |
| <u>Administrative and Financial Services -</u> <u>Service Centers</u> | <u>Sandra Harper</u> | 624-7802 | 888-577-6690 | 111 Sewall St, 78 State House Station | Augusta | 04333 |
| <u>Administrative and Financial Services -</u> <u>Bureau of General Services</u> | | 624-7344 | 888-577-6690 | Cross Building, 77 State House Station | Augusta | 04333 |
| <u>Administrative and Financial Services -</u> <u>State Controller</u> | <u>Terry Brann</u> | 626-8423 | 888-577-6690 | Cross Building, 14 State House Station | Augusta | 04333 |
| <u>Administrative and Financial Services -</u> <u>State Budget Officer</u> | <u>Dawna Lopatosky</u> | 624-7810 | 888-577-6690 | Cross Building 3rd Floor | Augusta | 04333 |
| <u>Administrative and Financial Services -</u> <u>Office of Information Technology</u> | <u>Greg McNeal</u> | 624-7568 | 888-577-6690 | 26 Edison Drive, 145 State House Station | Augusta | 04333 |
| <u>Administrative and Financial Services -</u> <u>Bureau of Human Resources</u> | <u>Joyce Oreskovich</u> | 287-4447 | 888-577-6690 | 4 State House Station | Augusta | 04333 |
| <u>Administrative and Financial Services -</u> <u>Office of Employee Relations</u> | <u>Joyce Oreskovich</u> | 287-4447 | 888-577-6690 | 45 Memorial Circle | Augusta | 04333 |
| <u>Administrative and Financial Services -</u> <u>Maine Revenue Services</u> | <u>John Sagaser</u> | 624-9536 | 888-577-6690 | 26 Edison Drive | Augusta | 04333 |
| <u>Agriculture</u> | <u>Melanie Littlefield</u> | 287-3419 | | Deering Building, 28 State House | Augusta | 04333 |

| | | | | Station | | |
|---|-------------------------|----------|--------------|--|-----------|-------|
| <u>Attorney General's Office</u> | <u>Phyllis Gardiner</u> | 626-8800 | 877-887-3878 | 6 State House Station | Augusta | 04333 |
| <u>Audit</u> | <u>Michael Poulin</u> | 624-6266 | | 66 State House Station | Hallowell | 04333 |
| <u>Conservation</u> | <u>Eliza Townsend</u> | 287-4901 | 888-577-6690 | 22 State House Station | Augusta | 04333 |
| <u>Conservation</u> | <u>Gale Ross</u> | 287-4900 | 888-577-6690 | 22 State House Station | Augusta | 04333 |
| <u>Corrections</u> | <u>Judy Plummer</u> | 287-4386 | 888-577-6690 | Tyson Bldg. AMHI | Augusta | 04333 |
| <u>Defense, Veterans and Emergency Management - Maine Emergency Management Agency</u> | <u>Lynette Miller</u> | 624-4420 | 877-789-0200 | 45 Commerce Drive | Augusta | 04333 |
| <u>Defense, Veterans and Emergency Management - Bureau of Veterans' Affairs</u> | <u>Don Lagace</u> | 626-4271 | | 33 State House Station, Camp Keyes | Augusta | 04333 |
| <u>Defense, Veterans and Emergency Management - Army and Air National Guard</u> | <u>Kevin McDougall</u> | 430-5012 | | 38 State House Station, Camp Keyes | Augusta | 04333 |
| <u>Economic and Community Development</u> | <u>Brian Hodges</u> | 624-9804 | 888-577-6690 | Cross Building | Augusta | 04333 |
| <u>Education</u> | <u>Greg Scott</u> | 624-6620 | 888-577-6690 | Cross Building, 23 State House Station | Augusta | 04333 |
| <u>Environmental Protection</u> | <u>Pete Carney</u> | 287-4305 | 800-492-0859 | 17 State House Station, Hospital Street | Augusta | 04333 |
| <u>Finance Authority of Maine</u> | <u>Beth Bordowitz</u> | 623-3263 | 626-2717 | 5 Community Drive P.O. Box 949 | Augusta | 04332 |
| <u>Governor, Office of the</u> | <u>Dan Billings</u> | 287-3531 | 287-6548 | 1 State House Station | Augusta | 04333 |
| <u>Health and Human Services</u> | <u>Marina Thibeau</u> | 287-4252 | 800-606-0215 | 221 State Street 11 State House Station | Augusta | 04333 |

| | | | | | | |
|---|---------------------------------------|----------|------------------|--|-----------|----------------|
| <u>Inland Fisheries and Wildlife Office of the Commissioner</u> | <u>Andrea Erskine</u> | 287-5201 | | 284 State Street | Augusta | 04333 |
| <u>Labor</u> | <u>Adam Fisher</u> | 621-5095 | 800-794- 1110 | 54 State House Station | Augusta | 04333 |
| <u>Maine Housing Authority</u> | <u>Linda Uhl</u> | 626-4600 | 800-452- 4603 | 353 Water Street | Augusta | 04330 |
| <u>Maine Commission on Governmental Ethics</u> | <u>Paul Lavin</u> | 287-3024 | | 135 State House Station | Augusta | 04333 |
| <u>Maine Commission on Indigent Legal Services</u> | <u>John Pelletier</u> | 287-3254 | | 154 State House Station | Augusta | 04333 |
| <u>Maine Arts Commission - Programs</u> | <u>Donna McNeil</u> | 287-2714 | 877-887- 3878 | 25 State House Station, 193 State Street | Augusta | 04333 |
| <u>Maine Arts Commission - Business Administration</u> | <u>Gail Waddell</u> | 287-5633 | 877-887- 3878 | Maine State Library State Office Complex | Augusta | 04333 |
| <u>Maine International Trade Center</u> | <u>Janine Bisaillon- Cary</u> | 541-7400 | | 511 Congress Street, Suite 100 | Portland | 04101 |
| <u>Maine Historic Preservation Commission</u> | <u>Earle Shettleworth</u> | 287-2132 | | 55 Capitol Street, 65 State House Station | Augusta | 04333 |
| <u>Maine Human Rights Commission</u> | <u>John Gause</u> | 624-6051 | 888-577- 6690 | 51 State House Station | Augusta | 04333 |
| <u>Maine Health Data Organization</u> | <u>Alan Prysunka</u> | 287-6723 | | 151 Capitol Street, 102 State House Station | Augusta | 04333 |
| <u>Maine Technology Institute</u> | <u>Betsy Biemann</u> | 582-4790 | | 405 Water Street, Suite 300 | Gardiner | 04345 |
| <u>Maine Turnpike Authority</u> | <u>Jon Arey</u> | 871-7771 | | 2360 Congress St | Portland | 04102 |
| <u>Marine Resources</u> | <u>Donna Hall</u> | 624-6553 | 287-4474 | Winthrop Street | Hallowell | 04347 -0021 |
| <u>Professional and Financial Regulation - Office of the Commissioner</u> | <u>Anne Head</u> | 624-8511 | 888-577- 6690 | 122 Northern Avenue | Gardiner | 04333 -0035 |
| <u>Professional and Financial</u> | <u>John Barr</u> | 624-8561 | 888-577- | 122 Northern | Gardiner | 04333 |

| | | | | | | |
|--|-------------------------------|----------|--------------|---|-----------|------------|
| Regulation - <u>Bureau of Financial Institutions</u> | | | 6690 | Avenue | | -0035 |
| Professional and Financial Regulation - <u>Office of Securities</u> | <u>Judy Shaw</u> | 624-8551 | 888-577-6690 | 76 Northern Avenue | Gardiner | 04345 |
| Professional and Financial Regulation - <u>Office of Licensing and Registration</u> | <u>Anne Head</u> | 624-8633 | 888-577-6690 | 122 Northern Avenue | Gardiner | 04333-0035 |
| Professional and Financial Regulation - <u>Bureau of Insurance</u> | <u>Tom Record</u> | 624-8424 | 888-577-6690 | 124 Northern Avenue, 34 State House Station | Gardiner | 04345 |
| Professional and Financial Regulation - <u>Bureau of Consumer Credit Protection</u> | <u>Will Lund</u> | 624-8527 | 888-577-6690 | 122 Northern Avenue | Gardiner | 04333-0035 |
| <u>Public Advocate</u> | <u>Patty Moody-DAngelo</u> | 287-2447 | | 103 Water Street 3rd Floor | Hallowell | 04347 |
| <u>Public Safety</u> | <u>Christopher Parr</u> | 624-7205 | 287-3659 | 45 Commerce Drive - Suite 1 | Augusta | 04333 |
| <u>Public Utilities Commission</u> | <u>Joanne Steneck</u> | 287-1390 | 800-437-1220 | 242 State Street | Augusta | 04333 |
| <u>Secretary of State</u> | <u>Chales E. Summers, Jr.</u> | 626-8400 | 207-624-9105 | 148 State House Station | Augusta | 04333 |
| State Planning Office - <u>Office of the Director</u> | <u>Tony Van Den Bossche</u> | 287-1474 | | 38 State House Station, 184 State Street | Augusta | 04333 |
| State Planning Office - <u>Office of Energy Independence and Security</u> | <u>John Kerry</u> | 287-3292 | | 38 State House Station, 184 State Street | Augusta | 04333 |
| <u>Transportation</u> | <u>Toni Kemmerle</u> | 624-3024 | 888-516-9364 | Child Street, 2nd Level | Augusta | 04333 |
| <u>Treasurer</u> | <u>Barbara Rath</u> | 624-7479 | 888-577-6690 | 111 Sewall St., Cross Building | Augusta | 04333 |
| <u>Workers' Compensation Board</u> | <u>John Rohde</u> | 287-7091 | 877-832-5525 | AMHI Deering Building | Augusta | 04333 |

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Date
Name
Company Name (if applicable)
Address

Dear (FOAA Officer):

Pursuant to the Maine Freedom of Access Act, (1 M. R. S. A. § 401 *et seq.*) I respectfully request access to [insert a specific, detail description of the material you would like to request]. I believe these records are in the custody of [try to identify the specific office/department/ bureau where record(s) is/are located].

I am willing to pay all lawful and reasonable costs associated with this request. Please notify me in advance what the costs will be.

If you intend to deny this public interest in whole or in part, I request that you advise me, in writing, of the particular statutory exemption upon which you are relying, and an explanation for doing so, as required by Chapter 13 of the Maine Statutes. Also, if the exemption you are claiming applies to only a portion of a record please delete the exemption section and release the remainder of the records as required by law.

In light of the nature and importance of the records requested, please make them available within a reasonable time. If you have any questions about this request, please call me at [phone number].

Thank you in advance for processing my request.

Sincerely,

Concerned Citizen

Appendix C: List of Maine Superior Courts

| Town | Address | Phone # | TTY-only # |
|----------------|--|----------------|----------------|
| <u>Alfred</u> | 45 Kennebunk Rd., P.O. Box 160, Alfred 04002 | (207) 324-5122 | (207) 459-7860 |
| <u>Auburn</u> | 2 Turner St., P.O. Box 3660, Auburn 04212 | (207) 330-7500 | (207) 783-5458 |
| <u>Augusta</u> | 95 State Street, Augusta 04330 | (207) 624-5800 | (207) 623-0477 |

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Right to Know Advisory Committee P.L. 2005, Chapter 631

Appointment(s) by the Governor

Michael Cianchette

33 Winn Road Cumberland, ME 04021 207 287-3543

Representing State Government Interest

Richard P. Flewelling

Maine Municipal Assoc 60 Community Drive Augusta, ME 04330

Representing Municipal Interests

Harry Pringle

Drummond Woodsum & MacMahon 245 Commercial St PO Box 9781 Portland, ME 04104-5081

207 772-1941

Representing School Interests

Appointment(s) by the President

Shenna Bellows

Maine Civil Liberties Union 401 Cumberland Ave. Portland, ME 04101

207 774-5444

Representing the Public

Percy L. Brown Jr.

County Commissioner, Hancock County 97 Sunset Road

Deer Isle, ME 04627

Representing County or Regional Interests

Mark Dion

Cumberland County Sheriff's Department 36 County Way

Portland, ME 04102

207 774-1444

Representing Law Enforcement Interests

A. Jay Higgins

18 West Street Manchester, ME 04351

Representing Broadcasting Interests

Kelly Morgan

90 Loggin Road

Cape Neddick, ME 04072

Representing the Press

Sen. David R. Hastings III

955 Main Street Fryeburg, ME 04037

Senate Member of the Judiciary Committee

Mal Leary

Capitol News Service 17 Pike Street Augusta, ME 04330 207 621-2384

Representing a Statewide Coalition of Advocates of Freedom of Access

Judy Meyer

Lewiston Sun Journal

104 Park Street

Lewiston, ME 04243-4400 207 689-2902

Representing Newspaper Publishers

Mike Violette

WGAN

420 Western Ave.
South Portland, ME 04102
Representing Broadcasting Interests

Robert Weaver
45 Sawyer Street, Apt. 2 Portland, ME 04103
Representing the Public

Rep. Joan M. Nass
P.O. Box 174 Acton, ME 04001
House Member of the Judiciary Committee

Attorney General
Linda Pistner
Chief Deputy Attorney General 6 State House Station Augusta, ME 04333
207 626-8800
Designee

Chief Justice
James T. Glessner
State Court Administrator PO Box 4830
Portland, ME 04112
207 822-0792
Member of the Judicial Branch

Staff:

Peggy Reinsch, Office of Policy and Legislation Analysis, 287-1670
Colleen McCarthy Reid, Office of Policy and Legislation Analysis, 287-1670

Public Records Exceptions Subcommittee
Proposed letter to HHS Committee

Exceptions 38 and 39

Sen. Earle L. McCormick
Rep. Meredith N. Strang Burgess
Joint Standing Committee on Health and Human Services
100 State House Station
Augusta, Maine 04333

Dear. Sen. McCormick and Rep. Strang Burgess:

The Public Records Exceptions Subcommittee of the Right to Know Advisory Committee is reviewing existing public records exceptions in the statutes, and is focusing on the exceptions found in Titles 22 through 25. The Subcommittee is expected to review and evaluate each public records exception and make a recommendation for either keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation.

As part of its review, the Subcommittee considered 2 exceptions in Title 22 relating to records collected or maintained by programs authorized within the Department of Health and Human Services that have never been implemented:

- Title 22, section 3188, subsection 4 relating to the Maine Managed Care Insurance Plan Demonstration program for uninsured individuals; and
- Title 22, section 3192, subsection 13 relating to medical data of the Community Health Access Program.

The Department of Health and Human Services made a recommendation to the Subcommittee that the specific confidentiality provisions be repealed because the statutes have never been used, and also suggested to the Subcommittee that all of sections 3188 and 3192 should be repealed. The Subcommittee declined to recommend that the sections be repealed in their entirety because the underlying policy issue is beyond the scope of the Subcommittee's charge. As the Legislature's policy committee with jurisdiction over health and human services matters, we are writing to inform you of the recommendation that the statutory provisions authorizing the Maine Managed Care Insurance Plan Demonstration program and the Community Health Access Program be repealed because the programs have never been implemented.

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.

Public Records Exceptions Subcommittee
Proposed draft language changes

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Sec. 3. **22 MRSA § 8707** is amended to read:

§8707. Public access to data

The board shall adopt rules to provide for public access to data and to implement the requirements of this section.

1. Public access; confidentiality. The board shall adopt rules making available to any person, upon request, information, except privileged medical information and confidential information, provided to the organization under this chapter as long as individual patients are not directly or indirectly identified through a reidentification process. The board shall adopt rules to protect the identity of certain health care practitioners, as it determines appropriate, except that the identity of practitioners performing abortions as defined in section 1596 must be designated as confidential and must be protected. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

2. Notice and comment period. The rules must establish criteria for determining whether information is confidential clinical data, confidential financial data or privileged medical information and adopt procedures to give affected health care providers and payors notice and opportunity to comment in response to requests for information that may be considered confidential or privileged.

3. Public health studies. The rules may allow exceptions to the confidentiality requirements only to the extent authorized in this subsection.

A. The board may approve access to identifying information for patients to the department and other researchers with established protocols that have been approved by the board for safeguarding confidential or privileged information.

B. The rules must ensure that:

(1) Identifying information is used only to gain access to medical records and other medical information pertaining to public health;

(2) Medical information about any patient identified by name is not obtained without the consent of that patient except when the information sought pertains only to verification or comparison of health data and the board finds that confidentiality can be adequately protected without patient consent;

(3) Those persons conducting the research or investigation do not disclose medical information about any patient identified by name to any other person without that patient's consent;

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(4) Those persons gaining access to medical information about an identified patient use that information to the minimum extent necessary to accomplish the purposes of the research for which approval was granted; and

(5) The protocol for any research is designed to preserve the confidentiality of all health care information that can be associated with identified patients, to specify the manner in which contact is made with patients and to maintain public confidence in the protection of confidential information.

C. The board may not grant approval under this subsection if the board finds that the proposed identification of or contact with patients would violate any state or federal law or diminish the confidentiality of health care information or the public's confidence in the protection of that information in a manner that outweighs the expected benefit to the public of the proposed investigation.

4. Confidential or privileged designation. ~~The rules must determine to be confidential or privileged information all data designated or treated as confidential or privileged by the former Maine Health Care Finance Commission. Information regarding discounts off charges, including capitation and other similar agreements, negotiated between a payor or purchaser and a provider of health care that was designated as confidential only for a limited time under the rules of the former Maine Health Care Finance Commission is confidential to the organization, notwithstanding the termination date for that designation specified under the prior rules.~~ The board may determine financial data submitted to the organization under section 8709 to be confidential information if the public disclosure of the data will directly result in the provider of the data being placed in a competitive economic disadvantage. This section may not be construed to relieve the provider of the data of the requirement to disclose such information to the organization in accordance with this chapter and rules adopted by the board.

5. Rules for release, publication and use of data. The rules must govern the release, publication and use of analyses, reports or compilations derived from the health data made available by the organization.

Summary

This amendment removes language related to confidentiality of data held by the former Maine Health Care Finance Commission. The amendment retains language authorizing the Maine Health Data Organization board to determine certain financial data submitted to the organization by health care providers to be confidential if disclosure of the data will place the provider at a competitive economic disadvantage.

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Proposed draft language changes

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Sec. 4. 24-A MRSA § 2393 is amended to read:

§2393. Initial funding of pool

1. Payments by insurers. Insurers shall pay to the pool on or before January 1, 1996 the amount of \$65,000,000, as follows.

A. Major insurers shall pay to the pool 90% of the \$65,000,000 payment, which is \$58,500,000. Each major insurer shall pay to the pool that major insurer's allocated share of the payment required by this paragraph as determined in accordance with the following:

(1) If the major insurer's percentage of the total net direct written premium in the voluntary workers' compensation market in the State for the calendar years 1989 and 1990 was less than 3.4% according to data compiled by the National Council on Compensation Insurance, then the major insurer must pay to the pool \$4,906,000;

(2) If the major insurer's percentage of the total net direct written premium in the voluntary workers' compensation market in the State for the calendar years 1989 and 1990 was equal to or greater than 3.4%, according to data compiled by the National Council on Compensation Insurance, then the major insurer must pay \$4,906,000 less one of the following credits:

(a) If the major insurer's percentage of total net direct written premium in the voluntary market exceeded 25% for each of the calendar years 1989 and 1990, then \$1,811,000;

(b) If the major insurer's percentage of total net direct written premium in the voluntary market exceeded 10% for each of the calendar years 1989 and 1990, then \$1,772,000;

(c) If the major insurer's percentage of total net direct written premium in the voluntary market exceeded 10% for either calendar year 1989 or 1990, then \$807,000;

(d) If the major insurer's percentage of total net direct written premium in the voluntary market exceeded 7.5% for each of the calendar years 1989 and 1990, then \$596,000; or

(e) For any other major insurer that qualifies for credit under this subparagraph, \$289,000;

(3) One or more major insurers may agree in writing to pay more or less than the amount of their allocated share under subparagraph (1) or (2); except that:

(a) A major insurer may not pay less than the allocated share under subparagraph (1) or (2), unless the written agreement is executed by all major insurers that have timely paid or agreed in writing to timely pay in full at least their allocated share;

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(b) The total amount of timely payments to the pool by major insurers is equal to or greater than \$58,500,000;

(c) The pool is made a 3rd-party beneficiary to a written agreement among certain major insurers that provides for:

(i) Timely payments to the pool by major insurers that are equal to \$58,500,000; and

(ii) An express right of the pool to enforce the payments required by that agreement; and

(d) Timely payment of any share agreed upon in writing pursuant to this subparagraph in an amount less than the allocated share under subparagraph (1) or (2) constitutes timely payment in full of an allocated share for purposes only of subsection 1, paragraph C or section 2396, subsection 1.

(4) If the total amount paid according to the requirements of subparagraphs (1), (2) and (3) exceeds \$58,500,000, the pool must disburse within 30 days the excess amount by refunding to each major insurer that has timely paid in full at least its allocated share under subparagraph (1) or (2) in direct proportion to the amount that each major insurer paid to the pool as part of the total major insurers' payment required by this paragraph.

B. Minor insurers shall pay to the pool 10% of the \$65,000,000 payment, which is \$6,500,000. Each minor insurer shall pay to the pool an allocated share of the payment required by this paragraph as determined in accordance with the following.

(1) Except as provided in subparagraph (2), an allocated share equal to the sum of the amounts described in divisions (a) to (c) must be paid to the pool.

(a) Minor insurers authorized to provide workers' compensation insurance in the State at any time during 1989 pay 59% of the \$6,500,000 payment, with each minor insurer paying a per capita share.

(b) Minor insurers authorized to provide workers' compensation insurance in the State at any time during 1990 pay 38% of the \$6,500,000 payment, with each minor insurer paying a per capita share.

(c) Minor insurers authorized to provide workers' compensation insurance in the State at any time during 1991 pay 3% of the \$6,500,000 payment, with each minor insurer paying a per capita share.

(2) A minor insurer that qualifies for a partial exemption under this subparagraph shall pay to the pool the greater of \$10,000 or 2% of the minor insurer's average annual after-tax adjusted earnings for the 3 calendar years immediately prior to enactment of this chapter as reported in the minor insurer's annual statement filed with the superintendent. A minor insurer qualifies for a partial exemption from the per capita share payment required by this paragraph if, for the 3 calendar years immediately prior to enactment of this chapter, as reported in the minor insurer's annual statement filed with the superintendent, the minor insurer's:

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- (a) Average annual after-tax adjusted earnings were less than \$2,000,000; and
 - (b) Surplus as to policyholders did not exceed \$12,500,000.
- (3) A minor insurer that has not received a partial exemption under subparagraph (2) is entitled to participation credits determined as follows.
- (a) For any policy year beginning on or after January 1, 1989, the share for each minor insurer authorized to write workers' compensation insurance in the year to which the calculation in this division pertains is reduced by .05% for each .10% that its participation ratio for the year to which the assessment relates exceeds its participation ratio for the base period as calculated by dividing the minor insurer's net direct written premium for the base period by the total minor insurer's net direct written premium for the base period. For purposes of this division, "base period" means the calendar years 1983 to 1986. The participation ratio for the year to which the assessment relates is calculated by dividing the minor insurer's net direct written premium in that calendar year by the total net direct written premium of minor insurers that were authorized at any time during that year;
 - (b) Credits earned by a minor insurer may not result in a minor insurer's participation ratio being adjusted to less than 1/2 of its otherwise allocated share;
 - (c) For a minor insurer not authorized to write workers' compensation insurance in 1986, its adjusted participation ratio is 1/2 of its participation ratio in the year to which the calculation applies;
 - (d) Any deficiency must be distributed among all minor insurers in proportion to the adjusted participation ratio, after credit adjustments; and
 - (e) For purposes of this subparagraph, "adjusted participation ratio" means a minor insurer's participation ratio as calculated in accordance with this subparagraph and after application of any credits. For purposes of this subparagraph, net direct written premium does not include premiums for residual market risks reinsured by the pool or retrospective rating plan adjustments on policies effective prior to January 1, 1988.
- (4) The total amount of the differences between the following must be paid by those minor insurers that actually paid their allocated share as of January 1, 1996 by allocating the difference to those minor insurers in the same proportion as each such minor insurer's payment bears to the total aggregate amount actually paid by minor insurers as of January 1, 1996:
- (a) The otherwise allocated share payments under subparagraph (1); and
 - (b) The payments made by minor insurers that qualify for a partial exemption as provided in subparagraph (2) and any participation credits under subparagraph (3).
- (5) In the event a minor insurer for any reason fails to pay its allocated share, as described in this paragraph, by January 1, 1996, then the pool may charge the deficiency resulting from those uncollected amounts to all minor insurers that actually pay their allocated share as of January 1, 1996 by allocating that deficiency to those minor insurers in the same proportion as each such minor

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insurer's payment bears to the total aggregate amount actually paid by minor insurers as of January 1, 1996. Those minor insurers are subrogated to the pool's right to collect such amounts from the delinquent minor insurer.

(6) One or more minor insurers may agree in writing to pay more or less than the amount of their allocated share under subparagraphs (1) to (4), except that:

(a) A minor insurer may not pay less than the allocated shares under subparagraphs (1) to (4) unless the written agreement is executed by all minor insurers that have timely paid or agreed in writing to timely pay in full at least their allocated share;

(b) The total amount of timely payments to the pool by minor insurers is equal to or greater than \$6,500,000;

(c) The pool is made a 3rd-party beneficiary to a written agreement among certain minor insurers that provides for:

(i) Timely payments to the pool by minor insurers that are equal to \$6,500,000; and

(ii) An express right of the pool to enforce the payments required by that agreement; and

(d) Timely payment of any share agreed upon in writing pursuant to this subparagraph in an amount less than the allocated share under subparagraphs (1) to (4) constitutes timely payment in full of an allocated share for purposes only of subsection 1, paragraph C or section 2396, subsection 1.

(7) If the total amount paid according to the requirements of subparagraphs (1) to (6) exceeds \$6,500,000, the pool must disburse within 30 days the excess amount by refunding to each minor insurer that has timely paid in full at least its allocated share under subparagraphs (1) to (4) in direct proportion to the amount that each minor insurer paid to the pool as part of the total minor insurers' payment required by this paragraph.

C. The pool shall bill and collect from each insurer the allocated share established by paragraphs A and B. If an insurer has not timely paid its allocated share in full to the pool on or before January 1, 1996, then the insurer is considered delinquent and the following applies.

(1) The pool has all the rights, powers and authority to take all necessary and appropriate action, as determined in the pool's discretion, against the delinquent insurer to collect any amounts not paid as and when due, and any deficiency is assessed interest at the rate of 10% per annum from January 1, 1996 until full payment from the insurer is received by the pool. The pool is entitled to an award of and reimbursement from any delinquent insurer of the costs of enforcement and collection of any amounts not paid as and when due, including all costs and expenses, reasonable attorney's and paralegal's fees and any other professional fees and expenses associated with the pool's enforcement and collection efforts.

(2) If the pool has received \$58,500,000 from major insurers or \$6,500,000 from minor insurers, valued as of January 1, 1996, the pool shall provide prompt written notice of this fact to insurers in the same category, either major or minor.

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Within 90 days following a request, the pool shall assign all such rights, powers and authority, including the entitlement to costs and expenses, to any insurers in the same category of the delinquent insurer that have requested an assignment and timely paid in full at least the allocated share established by paragraphs A and B.

(3) The pool has the right to set off any amounts due under this chapter to the pool from a delinquent insurer against any sums credited by or due from the pool to the delinquent insurer and against any other property of the delinquent insurer in the possession or under the control of the pool.

(4) Regardless of whether any action is taken pursuant to subparagraphs (1) to (3), the superintendent is authorized to exercise all authority as may be provided by and in accordance with law to take appropriate action against any delinquent insurer. In addition to any other authority the superintendent may possess under law, the superintendent upon notice and hearing may suspend a delinquent insurer's authority to transact the business of insurance in the State for so long as the insurer remains delinquent. The authority granted to the superintendent under this paragraph and jurisdiction vested in the bureau are concurrent with other actions by other parties authorized in this paragraph.

(5) Any collection by or on behalf of the pool, or amounts obtained by setoff with respect to a delinquent insurer, are retained by the pool, until the insurers in the same category as the delinquent insurer have paid the total amount required for that category, plus interest pursuant to subparagraph (1) and costs and expenses of the pool for collection in an amount not to exceed the delinquent share, valued as of January 1, 1996, to the pool. Any excess must be distributed within 90 days among the insurers in the same category as the delinquent insurer that have timely paid in full at least the allocated share established by paragraphs A and B in direct proportion to that insurer's payment to the pool as part of the total payments required by paragraph A or B, except that any collection on behalf of the pool as the result of an assignment pursuant to subparagraph (2) must be distributed as agreed among the insurers that receive the assignment from the pool.

(6) No defense or substantive argument that could have been raised or asserted related to an insurer's status as a major insurer or minor insurer or any purported contractual rights under prior or existing law is extinguished or otherwise abridged in any proceeding against a delinquent insurer instituted under subparagraphs (1) to (5).

2. Payments by employers. Employers shall pay to the pool the following amounts.

A. Employers shall pay initial surcharges, in the manner described in this subsection, in an aggregate amount equal to \$110,000,000, calculated on a net present value basis using January 1, 1995 as the valuation date, a discount rate of 5% and the midpoint of each calendar quarter as the date of actual receipt of surcharge proceeds remitted to the pool for each calendar quarter. Proceeds included in determining when the \$110,000,000 initial surcharge is fully paid consist of:

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- (1) All proceeds from surcharges under this chapter on policies with effective dates on or after July 1, 1995 and surcharges under this chapter on self-insured employers with plan years commencing on or after July 1, 1995; and
 - (2) All proceeds from surcharges actually received in immediately available funds by the pool after 5:00 p.m., September 30, 1995, whether the proceeds result from a surcharge under this chapter or under laws existing prior to enactment of this chapter.
- B. Proceeds from surcharges under existing laws actually received in immediately available funds by the pool on or before 5:00 p.m., September 30, 1995 may not be credited against the initial surcharge requirement.
- C. The pool shall maintain records reflecting actual dates of receipt of proceeds from surcharges sufficient to enable the net present value calculation.
- D. The initial surcharges must be paid in accordance with the following provisions.
- (1) Beginning July 1, 1995 every insurer writing workers' compensation insurance in the State shall collect from workers' compensation insurance policyholders and pay to the pool a surcharge on all surchargeable premiums received by the insurer for those policies. During the initial surcharge period, the surcharge is at a fixed rate of 6.32% of the surchargeable premium. The surcharge may be applied only to policies with an effective date on or after 12:01 a.m., July 1, 1995. All surcharges received by each insurer during the preceding calendar quarter must be remitted to the pool within 15 days following the end of each calendar quarter, except that servicing carriers shall remit on February 15th, May 15th, August 15th and November 15th of each year. Any surcharge proceeds not remitted on a timely basis accrue interest at the rate of 10% per annum from the due date until paid in full. The pool is entitled to reimbursement from any insurer failing to remit surcharge proceeds on a timely basis for the pool's costs of collection of those amounts, including all collection costs and fees, reasonable attorney's and paralegal's fees and any other professional fees and expenses associated with the pool's collection efforts. The surcharges described in this subparagraph do not apply to reinsurance recognized by the superintendent pursuant to chapter 250, section 2, paragraph G or section 3, paragraph G, procured by an individual self-insured employer or a self-insured employer group.
 - (2) Self-insured employers that secured their obligation to provide workers' compensation benefits under the Workers' Compensation Act through issuance or renewal at any point during the fresh start period of an insurance policy for any portion of any of the policy years 1988 to 1992 are subject to a surcharge as provided in the following.
 - (a) During the initial surcharge period the rate of surcharge is 6.32% of the surchargeable premium as adjusted pursuant to this paragraph for the self-insured employer's current plan year utilizing estimated payroll as submitted with the self-insured employer's renewal application for authority to self-insure, in accordance with Chapter 250, section 2, paragraph C, subparagraph 1, division c or Chapter 250, section 3, paragraph C, subparagraph 1, division g as applicable, subject to audit

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pursuant to division (d), subdivision (iii). If the plan year in which a surcharge is collected or a credit is distributed is shorter than 12 months, due to a change in accounting period or termination of self-insurance authorization, the surcharge or credit for that plan year must be based upon the final audited payroll for the short plan year.

(b) All surcharges must be collected or distributed on a plan year basis. In each plan year, the percentage of the surchargeable premium to be surcharged is the same percentage as is applied to an insured employer whose policy period coincided with the plan year.

(c) Except for a successor self-insured employer, each self-insured employer shall pay surcharges relating to only that portion of the policy years 1988 to 1992 in which the self-insured employer insured its workers' compensation obligations. The surcharge factor, as determined by the board under this chapter, must be adjusted to take into consideration the policy years or portions of policy years 1988 to 1992 in which a self-insured employer was self-insured.

The self-insured employer adjustment is determined as follows. The surcharge factor must be multiplied by the factor attributed to each of the years 1988 to 1992, as set forth in the table below. If a self-insured employer was insured only during a portion of a policy year, then the factor for that year is prorated based on the ratio of the number of days in the policy year during which the self-insured employer was insured to 365 days.

| Policy Year | Factor |
|-------------|--------|
| 1988 | 28.48% |
| 1989 | 30.70% |
| 1990 | 23.26% |
| 1991 | 11.55% |
| 1992 | 6.01% |

(d) The board shall administer the surcharges on self-insured employers as follows.

(i) The board shall issue surcharge billings to self-insured employers, pursue collection of all invoiced surcharges, initiate legal proceedings as necessary to collect surcharges and maintain records adequate to administer the surcharge process. The records of the board and of the bureau form the basis for identifying self-insured employers who are subject to this paragraph.

(ii) Annual surcharges may be paid in a single lump sum within 30 days of the receipt of the pool's invoice or in quarterly installments at the self-insured employer's option. The board shall issue a yearly invoice as soon as practicable after the self-insured employer's plan approval or renewal date and receipt of all necessary supporting information from the

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superintendent. Each invoice must contain a schedule of dates when quarterly installments are due and clearly state the policy year or years for which the surcharge is imposed, the surcharge percentage multiplied by the factor applicable to each policy year and the amount of the surchargeable premium.

(iii) Each individual self-insured employer shall report final audited payrolls to the pool not later than 60 days after the end of each plan year and each self-insured employer that is a member of a self-insured group or the group's administrator, as the group may select, shall report final audited payrolls to the pool not later than 120 days after the end of each plan year and shall remit with the audit information any additional surcharges resulting from the audit.

(iv) Upon the request of a self-insured employer, including a successor self-insured employer or an administrator of a self-insurance group, the board may determine whether there was a factual inaccuracy in the information underlying a surcharge billing issued by the board for the fresh start period or whether the surcharge calculated by the board is consistent with the provisions of this subparagraph. The request must be filed within 180 days from the date on which the final payment is due and must be in writing, including a statement of the reason for the request and the amount, if known, of the alleged overcharge. If an appeal based upon an alleged overcharge is sustained, the board shall refund the overcharge, together with any investment earnings on those amounts. If a self-insured employer is aggrieved by the final action or decision of the board, or if the board does not act on the written request within 60 days, the self-insured employer may appeal to the superintendent within 60 days of such action or decision of the board. Notwithstanding a pending appeal, a self-insured employer must pay any surcharge billing issued by the board.

(e) Self-insured employers have the following obligations with respect to the surcharge process.

(i) As a condition of continuing authorization to self-insure, each self-insured employer and each group self-insurance administrator shall assist the board and the superintendent in the calculation, billing and collection of any applicable surcharge. The required assistance includes maintaining and providing, upon request of the board or the superintendent, actual premium history and all payroll and experience information necessary to calculate self-insured employer premiums, as specified in this subparagraph. Information provided by the self-insured employer is subject to audit by the pool and the superintendent at any time and self-insured employers shall provide to the pool, or its designee, and to the superintendent full and complete access to all books and records relating in any way to the audit. Group self-insurance administrators shall give prompt notice to the superintendent of any changes in group membership.

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Proposed draft language changes

(ii) Information provided by self-insured employers to the board pursuant to this paragraph is confidential. The board shall protect the confidentiality of all self-insured employer information in its possession, whether the information is obtained directly from the self-insured employer or from the superintendent or a group administrator. All information relating to a self-insured employer provided pursuant to this paragraph and in the possession of the board or superintendent continues to be confidential until that information is destroyed.

(iii) A self-insurance group may act as the collection agent for its members. Any group so electing shall notify the board. The board shall bill the group on a consolidated basis. The group shall remit its entire quarterly payment to the board within 30 days after receiving the invoice, whether or not any members remain in default and notify the board and the superintendent of any delinquency.

(iv) Each self-insured employer shall make provisions for possible surcharges in the normal course of operations and pay the full amount of any surcharge installment within 30 days after receiving an invoice from the board or the self-insured employer's self-insurance group. Late payments are subject to interest at the rate of 10% per annum.

(v) The failure of any self-insured employer or self-insurance group to comply with its duties under this paragraph constitutes grounds for suspension, revocation, termination of the option to self-insure, expulsion from a self-insurance group or other appropriate sanctions authorized under section 12-A, in addition to all procedures for the collection of past-due accounts otherwise available by law to the board or the governing body of the self-insurance group.

(f) The superintendent has the following responsibilities with respect to the surcharge process.

(i) The superintendent shall furnish to the board, on a monthly basis, a list of all self-insurance plan approvals, renewals and anniversaries that have occurred since the last report or for any other reason were not included in any previous report, including all approvals, terminations and membership changes for group self-insurers. For each employer listed, the superintendent shall provide all available information necessary for the board's imputed calculations under this paragraph, including: the date the new plan year began; the self-insurance group, if any, to which the self-insured employer belongs; the dates of coverage under each policy issued or renewed in policy years 1988 to 1992; the rating information for the current plan year, including estimated payroll by classification, premium rate for each classification, experience modification and other applicable rating adjustments; information relating to changes of ownership or control, changes of operations, changes of name or organizational structure; and other information necessary to determine successorship.

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Proposed draft language changes

(ii) The superintendent shall supplement promptly the initial report as necessary, including any revision to the self-insured employer's rating information on audit, any other additions or corrections to incomplete or inaccurate information provided in the initial report and the length of the plan year, if shorter than 12 months.

(g) A successor self-insured employer is subject to surcharge on the same basis as the predecessor employer would be if still actively doing business and self-insured. If a self-insured employer is the successor to more than one employer, then the successor employer's self-insured employer adjustment is the sum of each predecessor employer's self-insured employer adjustment multiplied by the ratio of the employer's surchargeable premium for the 12-month period immediately preceding the succession transaction to the combined surchargeable premium of all predecessor employers for that 12-month period.

(i) If one or more of the predecessor employers was insured at the time of the succession transaction, its self-insured employer adjustment is calculated pursuant to division (c), (h) or (i) as if it had become self-insured at the time of the succession transaction.

(ii) If business operations that were covered under a single workers' compensation policy or certificate of self-insurance authority are subsequently separately owned by virtue of any succession transaction, dissolution, reincorporation or other transaction or series of transactions, for purposes of this subparagraph each business is treated as a distinct employer, subject to surcharge as either an insured employer or a self-insured employer.

(iii) If substantial changes in operations during the 12-month period immediately preceding the succession transaction make the 12-month surchargeable premium an inappropriate measure of a predecessor employer's workers' compensation exposure prior to the transaction, the board may adopt procedures for calculating an annualized premium in a manner consistent with the intent of this subparagraph.

(h) A self-insured employer that secured its obligation to provide workers' compensation benefits under the Workers' Compensation Act through a self-insurance program approved by the superintendent for the entirety of that self-insured employer's policy years 1988 to 1992, in which the self-insured employer actually had an obligation to secure benefits under the Workers' Compensation Act is not subject to the surcharge.

(i) Except for any successor self-insured employer, self-insured employers that commence operations in the State on or after July 1, 1995 are subject to surcharge under this subparagraph on the same basis as self-insured employers that secured compensation under the Workers' Compensation Act by the purchase of an insurance policy throughout the entire fresh start period.

(3) An employer may, as specified in this subparagraph, prepay all of its surcharges for a period of 10 consecutive policy years or plan years. The 10-year

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period starts with the employer's first renewal date or plan year following July 1, 1995. Within 30 days after the inception of the first plan year or first policy renewal date following July 1, 1995, if the employer intends to exercise this option, the employer must file with the pool written notice electing to make a lump-sum payment of surcharges and shall include with the notice the employer's full lump-sum payment. If the election is not made within 30 days after the first day of the first plan year or policy year following July 1, 1995, the option expires and is no longer available. The pool shall implement such procedures for administering this option as the board determines necessary. An employer that elects this option shall reimburse the pool for its expenses of administering this option for that employer, including the cost of individually allocating those costs to individual employers, in accordance with billing procedures developed and implemented by the board. This subparagraph does not eliminate or limit the employer's liability to pay adjusted surcharges or supplemental surcharges pursuant to paragraph E or section 2394.

For purposes of this subparagraph, "lump-sum payment" is the surcharge for the first year multiplied by 10 and discounted to net present value using:

- (a) A 5% discount rate;
- (b) The first day of the first plan year or policy year starting on or after July 1, 1995; and
- (c) An assumption that the surcharge for each of the 10 plan years or policy years would have been paid on the first day of each subsequent plan year or policy year.

E. The initial surcharge percentage may be adjusted by the pool in accordance with the following provisions.

(1) Each July 1st beginning in 2003, the board shall establish a surcharge percentage to be imposed on all workers' compensation insurance policies issued or renewed on or after that date until the effective date of any subsequent adjustment in the surcharge percentage established by the board; except that, if supplemental surcharges and assessments have commenced under section 2394, no further adjustments may be made under this subparagraph. The surcharge must be at a level determined by the board to be sufficient to produce cash receipts over the ensuing 24 months that, together with all other funds reasonably anticipated by the board to be available on a cash basis over that period, produce an amount not less than the pool's projected cash requirements to meet its obligations over that period. In making that determination, the board shall employ and rely upon the advice of professional and consulting services, including services available through the pool's internal staff, as the board determines necessary.

(2) If the surcharge percentage established under this subparagraph exceeds 6.32%, then a prepaid employer shall pay surcharges for that future assessment period at the same rate as those employers who paid annually, based upon the employer's surchargeable premium for the policy year or plan year to which the increased surcharge percentage applies. A prepaid employer may take a credit for the surcharges prepaid for that assessment period pursuant to section 2393,

Public Records Exceptions Subcommittee
Proposed draft language changes

subsection 2, paragraph D, subparagraph (3) in an amount equal to the net present value calculated on a basis consistent with paragraph D, subparagraph (2), division (d), subdivision (ii). If the surcharge percentage is less than 6.32% for that future assessment period, then the pool shall refund to a prepaid employer an amount equal to the difference between the value of the lump-sum surcharge paid for the future assessment period calculated on a basis consistent with paragraph D, subparagraph (2), division (d), subdivision (ii) and the amount of surcharge due based upon the adjusted surcharge percentage and applicable surchargeable premium. For purposes of this subparagraph, "prepaid employer" means an employer who has elected to pay surcharges on a lump-sum basis pursuant to paragraph D, subparagraph (3).

(3) The board has authority to make interim adjustments in the surcharge percentage on or after July 1, 2003, to be effective on dates other than July 1st as specified by the board, to the extent considered necessary by the board to produce sufficient cash receipts from surcharges over the ensuing 24 months that, together with all other funds reasonably anticipated by the board to be available on a cash basis to the pool over the ensuing 24 months, will be sufficient to meet the pool's anticipated cash requirements over that period.

(4) In projecting the pool's anticipated cash requirements, the board shall maintain a reserve equal to 25% of the cash expenditures of the pool over the immediately preceding 12-month period.

F. The surcharges required by this subsection are considered premium for cancellation and nonrenewal purposes only and are not subject to premium tax, Maine Insurance Guaranty Association assessments, agents' commissions or other payments required on insurance policy premiums.

G. Employer surcharges required by this chapter are suspended if:

(1) The board determines that the pool's assets are adequate to satisfy all remaining obligations, including any necessary repayment to insurers that satisfy the requirements of subparagraph (2); and

(2) The insurers and employers have been repaid by the pool in amounts necessary to produce a ratio of actual surcharges under this subsection paid by employers calculated on a net present value basis using January 1, 1995 as a valuation date and a discount rate of 5% to actual payments by insurers to the pool under subsection 1, valued as of January 1, 1996, not including employer surcharges remitted to the pool by insurers, that is the same as 11 to 6.5, for employers and insurers respectively.

H. If the board suspends initial surcharges and the pool subsequently requires additional assets to satisfy remaining obligations, the board shall order additional initial surcharges consistent with this subsection. The board shall review the relationship between the pool's assets and liabilities as often as determined necessary by the board, but at least annually. Projections of assets and liabilities contained in any quarterly or annual statements of operation prepared by or at the direction of the board do not constitute a determination under this subsection.

Public Records Exceptions Subcommittee
Proposed draft language changes

3. Payments by Maine Insurance Guaranty Association. The association shall pay to the pool \$1,538,039 on or before February 15th, May 15th, August 15th, and November 15th of each year for 40 consecutive calendar quarters beginning August 15, 1996.

A. Each payment made by the association to the pool under this subsection is treated as a covered claim pursuant to section 4435, subsection 4, except that any provision or authority for the association to seek reimbursement or recoupment from any source other than by assessments to association member insurers does not apply. This section does not limit or impair a member insurer's right to recoupment under section 4447.

B. The quarterly payments by the association to the pool as required by this subsection must be made regardless of the financial condition or actual or projected cash requirements of the pool.

Summary

This amendment clarifies that information provided by self-insurers to the Maine Residual Market Pool or the Bureau of Insurance related to payment of workers' compensation residual market surcharges continues to be confidential until that information is destroyed.

Public Records Exceptions Subcommittee
Proposed letter to IFS Committee

Exception 112

Sen. Rodney L. Whittemore
Rep. Wesley E. Richardson
Joint Standing Committee on Insurance and Financial Services
100 State House Station
Augusta, Maine 04333

Dear Sen. Whittemore and Rep. Richardson:

The Public Records Exceptions Subcommittee of the Right to Know Advisory Committee is reviewing existing public records exceptions in the statutes, and is focusing on the exceptions found in Titles 22 through 25. The Subcommittee is expected to review and evaluate each public records exception and make a recommendation for either keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation.

As part of its review, the Subcommittee considered one exceptions in Title 24-A, section 6807, subsection 7 relating to examination and investigation information maintained by the Bureau of Insurance with respect to life settlement or viatical settlement contracts. The Bureau of Insurance and other interested parties recommended that no changes be made to this exception. The Subcommittee agreed with the Bureau's recommendation that no changes be made, but one Subcommittee member voted against the recommendation. The Subcommittee member's objection is based on the breadth of the exception because it states that all examination and investigation information is "...confidential by law and privilege, are not subject to subpoena and are not subject to discovery or admissible in evidence in any private civil action." See 24-A MRSA § 6807, sub-§7, ¶ B. The language is also inconsistent with the statutory language governing the confidentiality of examination records maintained or collected by other state agencies, including the provision governing examination reports of the Bureau of Insurance in Title 24-A, sections 225, 226 and 227. .

As the Legislature's policy committee with jurisdiction over health and human services matters, we are writing to inform you of the Subcommittee's recommendation and to make you aware of the inconsistent statutory language used in Title 24-A, section 6807, subsection 7.

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.

Public Records Exceptions Subcommittee

Proposed draft language changes

Exception #15

Sec. 1. 22 MRSA § 1555-D, sub-§ 1 is repealed:

§1555-D. Illegal delivery of tobacco products

A person may not knowingly transport or cause to be delivered to a person in this State a tobacco product purchased from a person who is not licensed as a tobacco retailer in this State, except that this provision does not apply to the transportation or delivery of tobacco products to a licensed tobacco distributor or tobacco retailer.

~~1. **Lists.** The Attorney General shall maintain lists of licensed tobacco retailers and known unlicensed tobacco retailers. The Attorney General shall provide to a delivery service lists of licensed tobacco retailers and known unlicensed tobacco retailers. The list of known unlicensed tobacco retailers is confidential. A delivery service that receives a list of known unlicensed tobacco retailers shall maintain the confidentiality of the list.~~

2. Penalty. The following penalties apply for violation of this section.

A. A person who violates this section commits a civil violation for which a fine of not less than \$50 nor more than \$1500 may be adjudged for each violation. A fine imposed under this paragraph may not be suspended.

B. An employer of a person who, while working and within the scope of that person's employment, violates this section commits a civil violation for which a fine of not less than \$50 nor more than \$1,500 may be adjudged for each violation. A fine imposed under this paragraph may not be suspended.

3. Enforcement. The Attorney General may bring an action to enforce this section in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of this section by any person or any person controlling such person. In addition, a violation of this section is a violation of the Maine Unfair Trade Practices Act.

4. Affirmative defense. It is an affirmative defense to a prosecution under this section that a person who transported tobacco products or caused tobacco products to be delivered reasonably relied on licensing information provided by the Attorney General under this section.

5. Rulemaking. The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

6. Forfeiture. Any tobacco product sold or attempted to be sold in a delivery sale that does not meet the requirements of this section is deemed to be contraband and is subject to forfeiture in the same manner as and in accordance with the provisions of Title 36, section 4372-A.

Summary

Public Records Exceptions Subcommittee

Proposed draft language changes

This amendment repeals the provision that designates as confidential lists maintained by the Attorney General's Office of known unlicensed tobacco retailers. The Attorney General no longer maintains such lists as a result of a Supreme Court decision that State law is preempted by federal law.

Public Records Exceptions Subcommittee
Proposed letter to HHS Committee

Exception # 15

Sen. Earle L. McCormick
Rep. Meredith N. Strang Burgess
Joint Standing Committee on Health and Human Services
100 State House Station
Augusta, Maine 04333

Dear. Sen. McCormick and Rep. Strang Burgess:

The Public Records Exceptions Subcommittee of the Right to Know Advisory Committee is reviewing existing public records exceptions in the statutes, and is focusing on the exceptions found in Titles 22 through 25. The Subcommittee is expected to review and evaluate each public records exception and make a recommendation for either keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation.

As part of its review, the Subcommittee considered an exception in Title 22, section 1555-D, subsection 1 relating to lists maintained by the Attorney General's Office of known unlicensed tobacco retailers. Upon reviewing the exception at the request of the Subcommittee, the Attorney General's Office recommended that the confidentiality provision be repealed as the lists required by the statute are no longer collected or maintained as a result of a U.S. Supreme Court decision ruling the Maine's law is preempted under federal law. In light of the Supreme Court ruling, the entire statute, section 1555-D, prohibiting the illegal delivery of tobacco products is not enforceable. In addition to the confidentiality provision in subsection 1, the Attorney General's Office also recommended that all of section 1555-D be repealed.

The Subcommittee declined to recommend that all of section 1555-D be repealed in its entirety because the underlying policy issue is beyond the scope of the Subcommittee's charge. As the Legislature's policy committee with jurisdiction over health and human services matters, we are writing to inform you of the recommendation that section 1555-D be repealed as a result of the U.S. Supreme Court's decision.

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.

Public Records Exceptions Subcommittee
Proposed draft language changes

Exception # 37 CME: Missing persons

22 §3034. Missing persons

1. Files; information. The Office of Chief Medical Examiner shall maintain files on missing persons sufficient for the purpose of identification when there is reason to suspect that those persons may not be found alive. These files may include such material as medical and dental records and specimens, details of personal property and physical appearance, samples of hair, fingerprints and specimens that may be useful for identification. The Chief Medical Examiner may require hospitals, physicians, dentists and other medical institutions and practitioners to provide information, samples and specimens. A person participating in good faith in the provision of the information, samples or specimens under this section is immune from any civil or criminal liability for that act or for otherwise cooperating with the Chief Medical Examiner.

2. Confidentiality; disclosure. All Except as provided in subsection 5, all information and materials gathered and retained pursuant to this section must be used solely for the purposes of identification of deceased persons and persons found alive who are unable to identify themselves because of mental or physical impairment. The files and materials are confidential, except that compiled data that does not identify specific individuals may be disclosed to the public. Upon the identification of a deceased person, those records and materials used for the identification may become part of the records of the Office of Chief Medical Examiner and may then be subject to public disclosure as pertinent law provides.

3. Reporting of missing persons. Missing persons may be reported directly to the Office of Chief Medical Examiner by interested parties. Law enforcement agencies or other public agencies that receive reports of missing persons, or that gain knowledge of missing persons, shall report that information to the Office of Chief Medical Examiner. Law enforcement agencies shall report all attempts to locate missing persons to the Office of Chief Medical Examiner. All absences without leave by individuals from state institutions must also be reported to the Office of Chief Medical Examiner when there exists a reasonable possibility of harm to that individual.

4. Cooperation. All state and law enforcement agencies and public and private custodial institutions shall cooperate with the Office of Chief Medical Examiner in reporting, investigating, clearing and gathering further information and materials on missing persons.

Public Records Exceptions Subcommittee
Proposed draft language changes

5. Release to assist in search. The Office of the Chief Medical Examiner may release confidential information and materials about a missing person that is gathered and retained pursuant to this section if the Chief Medical Examiner determines that such release may assist in the search for the missing person.

SUMMARY

This amendment gives the Office of the Chief Medical Examiner the discretion to release confidential information and materials about a missing person if the Chief Medical Examiner determines that releasing the information or materials may assist in the search for that missing person.

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Public Records Exceptions Subcommittee
Proposed draft language changes

Exception # 62 NNEPRA

Sec. . 23 MRS §8115 is amended to read:

§8115. Obligations of authority

All expenses incurred in carrying out this chapter must be paid solely from funds provided to or obtained by the authority pursuant to this chapter. Any notes, obligations or liabilities under this chapter may not be deemed to be a debt of the State or a pledge of the faith and credit of the State; but those notes, obligations and liabilities are payable exclusively from funds provided to or obtained by the authority pursuant to this chapter. Pecuniary liability of any kind may not be imposed upon the State or any locality, town or landowner in the State because of any act, agreement, contract, tort, malfeasance, misfeasance or nonfeasance by or on the part of the authority or its agents, servants or employees. ~~The records and correspondence relating to negotiations, trade secrets received by the authority, estimates of costs on projects to be put out to bid and any documents or records solicited or prepared in connection with employment applications are confidential. The authority is deemed to have a lawyer-client privilege.~~

Sec. . 23 MRS §8115-A is enacted to read:

§8115-A. Authority records

1. Confidential records. The following records of the authority are confidential:

A. Records and correspondence relating to negotiations of agreements to which the authority is a party or in which the authority has a financial or other interest. Once entered into, an agreement is not confidential;

B. Trade secrets;

C. Estimates of costs of goods or services to be procured by or at the expense of the authority; and

D. Any documents or records solicited or prepared in connection with employment applications, except that applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.

Public Records Exceptions Subcommittee
Proposed draft language changes

2. Lawyer-client privilege. The authority may claim the lawyer-client privilege in the same manner and circumstances as a corporation is authorized to do so.

SUMMARY

This amendment revises the confidentiality provisions that apply to the NNEPRA's records to clarify what records are not subject to public access.

This amendment provides that records and correspondence relating to negotiations of agreements are confidential, although the final agreements are not designated confidential by this language.

Trade secrets remain confidential.

This amendment clarifies that estimates of costs of goods or services to be procured by or at the expense of the authority are confidential, and do not become public over time.

This amendment revises the employment application confidentiality to track that of State, county and municipal employee applicants. All documents relating to applicants are confidential except for records pertaining to the applicant who is hired, most of which become public. Personal contact information of public employees is not a public record.

This amendment clarifies the language concerning the lawyer-client privilege; it allows the authority to claim the lawyer-client privilege in the same manner and circumstances as a corporation is authorized to do so.

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Reflects 11/17 Subcommittee Meeting

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011
Includes recommendations from Sept. 12 and Sept. 29 Subcommittee meetings
Revised 11/15/2011 9:12 AM

* = 11/17 subcommittee agenda
O = approved by subcommittee

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|---|-------------------|---|---|---|
| 15 | 22 | 1555-D | Title 22, section 1555-D, subsection 1, relating to lists maintained by the Attorney General of known unlicensed tobacco retailers | DHHS OAG | <ul style="list-style-type: none"> No requests RECOMMEND: Repeal subsection | 11/4/10: tabled 9/12/11: AMEND - wait for AG draft 9/29/11: AMEND and letter to HHS | 11/17 approved 3-0 |
| 18 | 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 | 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 letter |
| 19 | 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 | 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 letter |

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

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|-------|---------|-------------|---|-----------------------|---|---|--|
| 20 | 1711-C | 2 | Title 22, section 1711-C, subsection 2, relating to hospital records concerning health care information pertaining to an individual | DHHS | <ul style="list-style-type: none"> Not a public records exception: info in hands of private entities, allows disclosure to Licensing | 11/4/10: tabled 9/12/11: no change | |
| 21 | 1828 | | Title 22, section 1828, relating to Medicaid and licensing of hospitals, nursing homes and other medical facilities and entities | DHHS | <ul style="list-style-type: none"> Request generally not denied by identifying information is redacted No changes Surveys must be reviewed by federal CMS before can be released | 11/4/10: tabled 9/12/11: tabled for more info (AG) 9/29/11: no change | |

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Existing Public Records Exceptions, Titles 22 - 25

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|-------|---------|-------------|---|-------------------|---|---|---|
| 22 | 1848 | 1 | Title 22, 1848, subsection 1, relating to documents and testimony given to Attorney General under Hospital and Health Care Provider Cooperation Act | OAG | <ul style="list-style-type: none"> Confidential under 10 §1107 and 16 §614 No requests in recent years No change DHHS, Div of Licensing and Regulatory Services; Maine Hospital Association | 11/4/10: tabled 9/12/11: no change 5-1 (SB) | |
| 33 | 2706 | 4 | Title 22, section 2706, relating to prohibition on release of vital records in violation of section; recipient must have "direct and legitimate interest" or meet other criteria Amended in 2011, PL 2011, c. 58 | DHHS | <ul style="list-style-type: none"> Denial of access occurs daily pursuant to statute No changes | 11/4/10: tabled 9/12/11: no change | |
| 34 | 2706-A | 6 | Title 22, section 2706-A, subsection 6, relating to adoption contact files | DHHS | <ul style="list-style-type: none"> No FOA requests; only requests from adoptees and families Medical info protected by HIPAA No changes | 11/4/10: tabled 9/12/11: no change | |

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Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

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|-------|---------|-------------|---|-----------------------|--|---------------------------------------|--|
| 35 | 2769 | 4 | Title 22, section 2769, subsection 4, relating to adoption contact preference form and medical history form | DHHS | <ul style="list-style-type: none"> No FOIA requests; only requests from adoptees and families Medical info protected by HIPAA No changes | 11/4/10: tabled 9/12/11: no change | |
| 36 | 3022 | 8, 12, 13 | Title 22, section 3022, subsections 8, 12 and 13, relating to medical examiner information | OAG | <ul style="list-style-type: none"> Police reports and medical records: 3-5 requests per year Suicide notes: requests extremely rare Other materials: available to attorneys in court proceedings Communications : almost never requested No changes | 11/4/10: tabled 9/12/11: no change | |

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Existing Public Records Exceptions, Titles 22 - 25

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|-------|---------|-------------|---|-----------------------|---|---|--|
| 37 | 3034 | 2 | Title 22, section 3034, subsection 2, relating to the Chief Medical Examiner missing persons files | OAG | <ul style="list-style-type: none"> No requests RECOMMEND: give CME discretion to make identifying info public | 11/4/10: tabled 9/12/11: AMEND 9/29/11: wait for review of language | 11/17 approved 2-1 |
| 38 | 3188 | 4 | Title 22, section 3188, subsection 4, relating to the Maine Managed Care Insurance Plan Demonstration for uninsured individuals | DHHS | <ul style="list-style-type: none"> Never implement RECOMMEND repeal section | 11/4/10: tabled 9/12/11: letter to HHS about repeal | |
| 39 | 3192 | 13 | Title 22, section 3192, subsection 13, relating to Community Health Access Program medical data | DHHS | <ul style="list-style-type: none"> Never implement RECOMMEND repeal section | 11/4/10: tabled 9/12/11: letter to HHS about repeal | |
| 44 | 4008 | 1 | Title 22, section 4008, subsection 1, relating to child protective records | DHHS | <ul style="list-style-type: none"> Rarely applied in FOA requests; apply when parties in litigation that does not involve the department request child protective records No changes (must comply with federal law) | 11/4/10: tabled 9/12/11: no change | |

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|-------|---------|-------------|---|-------------------|---|---|---|
| 53 | 22 | 8707 | Title 22, section 8707, relating to the Maine Health Data Organization | MHDO | <ul style="list-style-type: none"> Data release rules Only two requests, one concerned paying for the data No changes | 10/18: Table - sub-§2 no change; sub-§4 why MHCFC link? 9/12/11: tabled 9/29/11: AMEND | |
| 54 | 22 | 8754 | Title 22, section 8754, relating to medical sentinel events and reporting | MHDO DHHS | <ul style="list-style-type: none"> No requests known Amend: "incidents reports and similar documents" | 11/4/10: tabled 9/12/11: tabled - more info and amendment language (AG) 9/29/11: Tabled | 11/17 tabled |
| 55 | 22 | 8824 | Title 22, section 8824, subsection 2, relating to the newborn hearing program | DHHS | <ul style="list-style-type: none"> No requests for personally identifiable info Protected by HIPAA No changes Involve Advisory Committee if changes | 11/4/10: tabled 9/12/11: no change | |

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011
Includes recommendations from Sept. 12 and Sept. 29 Subcommittee meetings
Revised 11/15/2011 9:12 AM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|--|-------------------|---|--|---|
| 56 | 22 | 8943 | Title 22, section 8943, relating to the registry for birth defects | DHHS | <ul style="list-style-type: none"> No requests for personally identifiable info Protected by HIPAA No changes Involve Advisory Committee if changes | 11/4/10: tabled 9/12/11: no change | |
| 57 | 23 | 63 | Title 23, section 63, relating to records of the right-of-way divisions of the Department of Transportation and the Maine Turnpike Authority | MTA & DOT | <ul style="list-style-type: none"> Covers two categories of records Invoked rarely Subject of two Law Court cases, one LD (not enacted) No changes | 11/4/10: tabled 9/12/11: tabled - invite to next meeting 9/29/11: AMEND - review draft | 11/17 tabled |
| 59 | 23 | 1980 | Title 23, section 1980, subsection 2-B, relating to recorded images used to enforce tolls on the Maine Turnpike Amended by PL 2011, c. 302, §18 | MTA | <ul style="list-style-type: none"> Violation Enforcement System; records license plates only See 23 §1982 No changes | 11/4/10: tabled 9/12/11: no change | |

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12 and Sept. 29 Subcommittee meetings

Revised 11/15/2011 9:12 AM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/ AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|--|-----------------------|---|---|--|
| 60 | 1982 | | Title 23, section 1982, relating to patrons of the Maine Turnpike | MTA | <ul style="list-style-type: none"> • Toll violation system, as well as any other records • Comes into play several times a year; never used in litigation in which MTA is a party • No changes | 11/4/10: tabled 9/12/11: no change | |
| 61 | 4251 | 10 | Title 23, section 4251, subsection 10, relating to records in connection with public-private transportation project proposals of at least \$25,000,000 or imposing new tolls | DOT | <ul style="list-style-type: none"> • Law became effective July 12, 2010 • No experience • No changes | 11/4/10: tabled 9/12/11: tabled - invite to next meeting 9/29/11: no change | |

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011
Includes recommendations from Sept. 12 and Sept. 29 Subcommittee meetings
Revised 11/15/2011 9:12 AM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|---|-------------------|---|---|---|
| 62 | 8115 | | Title 23, section 8115, relating to the Northern New England Passenger Rail Authority | NNEPRA | <ul style="list-style-type: none"> • Has not received any requests • Four types of records <ul style="list-style-type: none"> • Trade secrets • Records and correspondence relating to negotiations • Estimates of cost on projects put out to bid • Employment applications • No changes | 11/4/10: tabled 9/12/11: tabled - redraft for consistent language and policy; need review by NNEPRA 9/29/11: Tabled, need comments on draft | 11/17 approved 2-1 |

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12 and Sept. 29 Subcommittee meetings

Revised 11/15/2011 9:12 AM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/ AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|---|--|--|---|--|
| 66 | 2510 | 1 | Title 24, section 2510, subsection 1, relating to professional competence reports under the Maine Health Security Act | BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) | BOI has no role BdLicMed: <ul style="list-style-type: none"> ▶ cited 2-3 times per year ▶ PROPOSED: clarify confidentiality applies to all patient complaints MeHospAssn: <ul style="list-style-type: none"> ▶ MHA does not administer ▶ Not aware of requests ▶ No changes BdofDentalEx: ▶ No requests ▶ n/a MeMedAssn: <ul style="list-style-type: none"> ▶ MMA does not administer ▶ Don't know how frequent ▶ No changes | 9/27: table - ask medical licensing boards for input; <i>Consumers for Affordable Health Care input requested</i> 11/4/10: Tabled until 2011 9/12/11: tabled for Consumers for Affordable Health Care comments 9/29/11: AMEND (with §2505); needs review | 11/17 tabled |

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12 and Sept. 29 Subcommittee meetings

Revised 11/15/2011 9:12 AM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION OR RECOMMENDATION |
|-------|---------|-------------|--|--|---|---|---|
| 67 | 2510-A | | Title 24, section 2510-A, relating to professional competence review records under the Maine Health Security Act | BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) | BOI has no role BdLicMed: ▶ Cited 2-3 times per year ▶ PROPOSED: allow Bd to access peer review reports MeHospAssn: ▶ Not aware of requests ▶ No changes BdofDentalEx: ▶ No requests ▶ n/a MeMedAssn: ▶ substantial experience not held by public entities so not subject to FOA ▶ no changes | 9/27: table - ask medical licensing boards for input 11/4/10: tabled until 2011 9/12/11: tabled - invite Med Licensing Board 9/29/11: tabled; work with MeMedAssn and MeHospAssn on BdLicMed changes | 11/17 tabled |

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12 and Sept. 29 Subcommittee meetings

Revised 11/15/2011 9:12 AM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/ AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|--|--|---|---|---|
| 68 | 2604 | | Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act | BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) | BOI has no role BdLicMed: <ul style="list-style-type: none"> ▶ 100-200 times per year ▶ No recommendation (other states allow to be released) BdofDentalEx: <ul style="list-style-type: none"> ▶ No requests ▶ n/a MedicalMutual: <ul style="list-style-type: none"> ▶ Zero requests ▶ No changes MeMedAssn: <ul style="list-style-type: none"> ▶ MMA does not administer ▶ No changes | 9/27: table - ask medical licensing boards for input 11/4/10: tabled until 2011 9/12/11: tabled - invite Med Lic Bd 9/29/11: no change | |

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12 and Sept. 29 Subcommittee meetings

Revised 11/15/2011 9:12 AM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|--|---|--|---|---|
| 69 | 2853 | 1-A | Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act | BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) (ME Medical Assoc., ME trial Lawyers Assoc., ME State Bar Assoc.) | BOI has no role with the Superior Court BdLicMed: Cited 100-200 times per year, but doesn't usually receive court documents No charges MeHospAssn: Not aware if requests are made to courts No changes BdoofDentalEx: No requests MedicalMutual: No direct role in administration No changes MeMedAssn: MMA does not administer No changes | 9/27: table - ask medical licensing boards, Maine Trial Lawyers for input 11/4/10: tabled until 2011 9/12/11: no change 9/29/11: no change | |

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12 and Sept. 29 Subcommittee meetings

Revised 11/15/2011 9:12 AM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/ AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|---|---|--|---|---|
| 70 | 2857 | 1, 2 | Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels | BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) (ME Medical Assoc., ME trial Lawyers Assoc., ME State Bar Assoc.) | BOI has no role <ul style="list-style-type: none"> • Records of Screening Panels (Judicial Branch) BdLicMed: <ul style="list-style-type: none"> ▶ Not cited or applied; Bd doesn't receive panel information ▶ No recommendation MeHospAssn: <ul style="list-style-type: none"> ▶ Only partially administer ▶ Not aware about requests ▶ No changes BdofDentalEx: <ul style="list-style-type: none"> ▶ No requests ▶ n/a | 9/27: table - ask medical licensing boards, Courts, Maine Trial Lawyers for input 11/4/10: tabled until 2011 9/12/11: no change | |

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12 and Sept. 29 Subcommittee meetings

Revised 11/15/2011 9:12 AM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/ AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------------|---------|-------------|--|--------------------|---|--|---|
| 112 24-A | 6807 | 7 | Title 24-A, section 6807, subsection 7, paragraph A, relating to individual identification data of viators | BOI | <ul style="list-style-type: none"> To date, the Bureau has not conducted any examinations of life settlement companies. The exception has not been cited as a basis of denial of a FOA request No changes | 10/18: Table - ask TRecord, (subpoena) 11/4/10: divided report - no change 3-1 (SBellows) - but flag that inconsistent with treatment of examination reports 9/12/11: no action 9/29/11: letter to IFS | |

G:\STUDIES 2011\Right to Know Advisory Committee\Existing Public Records Exceptions Review\Chart of remaining exceptions 9-30-11.doc (11/15/2011 9:12:00 AM)

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12 and Sept. 29 Subcommittee meetings

Revised 11/15/2011 9:12 AM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/ AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|--|-----------------------|--|---|--|
| 73 | 24-A | 216 | Title 24-A, section 216, subsections 2 and 5, relating to records of the Bureau of Insurance | BOI | <ul style="list-style-type: none"> Records associated with actual or claimed violations of Insurance Code 2-4 requests per month Subpoena, hearing on motion to quash No changes MTLA: no changes | 9/27: table - ask Maine Trial Lawyers for input 9/12/11: tabled - for MTLA input 9/29/11: no change | |
| 94 | 24-A | 2393 | Title 24-A, section 2393, subsection 2, relating to workers' compensation pool self-insurance and surcharges | BOI | <ul style="list-style-type: none"> No FOA requests No changes | 10/18: Table - obsolete? Rewrite to ensure confidentiality of old records? 9/29/11: AMEND to address when program no longer exists | |

RIGHT TO KNOW ADVISORY COMMITTEE

DRAFT AGENDA

December 8, 2011

1:00 p.m.

Room 438, State House, Augusta

Convene

1. Welcome and Introductions
2. Reports from Subcommittees; Advisory Committee action on Subcommittee recommendations as necessary
 - Bulk Records Subcommittee and Legislative Subcommittee
Mike Cianchette and Judy Meyer
 - Criminal History Record Information Act revision, and Intelligence and Investigative Information
 - LD 1465
 - Future use of technology
 - Working papers public records exceptions
 - Treatment of requests for bulk transfers of public records
 - Additional recommendations
 - Public Records Exceptions Subcommittee
Shenna Bellows
 - (54) 22 MRSA §8754 - sentinel events
 - (66) 24 MRSA §2510 (and §2505) - professional competence reports
 - (67) 24 MRSA §2510-A - professional competence review records
 - (57) 23 MRSA §63 - MaineDOT and MTA records
 - (18) & (19) 22 MRSA §§1696-D and 1696-F - Community Right-to-know
 - (62) 23 MRSA §8115 - Northern New England Passenger Rail Authority (NNEPRA)
3. Review Advisory Committee recommendations
4. Draft Report
5. Other?

Adjourn

John Pelletier, Chair
Criminal Law Advisory Commission

Re: Criminal History Record Information Act

Dear Mr. Pelletier:

On behalf of the Right to Know Advisory Committee, thank you for the Criminal Law Advisory Commission's work in revising the Criminal History Record Information Act. The Advisory Committee was scheduled to review the confidentiality provisions and report its recommendations to the 124th Legislature, but we delayed our review and recommendations to give CLAC the time necessary to undertake the comprehensive review and revisions of the criminal law and procedure provisions that CLAC had identified as necessary. Our focus, as you know, is whether the confidentiality provisions in the statute are appropriate and as narrowly tailored as possible. We are also always supportive of efforts to make the statutes as clear and as understandable to the public as possible. We applaud you in your work to clarify and explain the criminal history records laws. We believe it is very helpful to separate the language governing intelligence and investigative information from the statutes that govern actual criminal history records.

The Advisory Committee's Legislative Subcommittee, chaired by Commission member Judy Meyer, reviewed the latest version of the proposed language in two separate public work sessions and questioned Special Assistant Attorney General Charles Leadbetter at length about the language, the intent and the changes incorporated into the draft. Mr. Leadbetter's knowledge is impressive and his assistance was invaluable in our review. Our understanding is that the public records exceptions have not changed significantly overall: what is confidential under the existing law will generally be confidential under the revision. We are aware that some of the clarifications may be interpreted as narrowing particular public records exceptions, and that the revision addresses a few substantive issues that are new to CHRIA. Major differences that users will notice are that the terminology used in the revision and the realigned structure make it abundantly clear what is public and what is not. We believe these are important improvements in Maine laws.

The Legislative Subcommittee unanimously recommended that the full Advisory Committee express its approval of the revision, which repeals the existing subchapter and

creates two new subchapters in Title 16. The Advisory Committee voted on December 8, 2011 to approve the revision, with the understanding that CLAC will finalize the revision before submitting it as legislation for introduction in the Second Regular Session of the 125th Legislature. We expect that the Judiciary Committee will have an opportunity to conduct the evaluation directed by Title 1, section 434, giving the Legislature the ability to carry out its own review of the public records exceptions. We will be happy to provide comments and advice to the Judiciary Committee.

Thank you for the opportunity to review CLAC's revision. Please do not hesitate to contact the Advisory Committee or its staff if you have any questions.

Sincerely,

Senator David R. Hastings III
Chair



STATE OF MAINE
125TH LEGISLATURE
SECOND REGULAR SESSION

Sixth Annual Report
of the
RIGHT TO KNOW ADVISORY COMMITTEE

January 2012

Members:

Sen. David R. Hastings III
Rep. Joan M. Nass
Perry Antone Sr.
Shenna Bellows
Percy Brown Jr.
Michael Cianchette
Richard Flewelling
James Glessner
A. J. Higgins
Mal Leary
William Logan
Judy Meyer
Kelly Morgan
Linda Pistner
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not count

DRAFT

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Appendices

- A. Authorizing legislation, 1 MRSA § 411
- B. Membership list, Right to Know Advisory Committee
- C. Recommendations for statutory changes to public records exceptions, Titles 22 - 25
- D. Recommended Draft Legislation
 - 1. *(still to come)*

EXECUTIVE SUMMARY

This is the sixth 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 2011, the Advisory Committee met four times: July 15, September 29, November 17 and December 8. To assist in completion of its work, the Advisory Committee appointed three subcommittees: Legislative, Public Records Exceptions and Bulk Records. 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. Diane DeJesus, currently a second year student at the Law School, worked with the Advisory Committee during the first semester of the 2011-2012 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 2011 recommendations and a summary of relevant Maine court decisions from 2011 on the freedom of access laws.

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

[Add recommendations made in Section VI of report]

In 2012, 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 the public records exceptions in Titles 22 through 25 (*Add in any issues that the Advisory Committee tables?*) The Advisory Committee looks forward to a full year of activities and working with the Governor, the Legislature and the Chief Justice of the Maine Supreme Judicial Court to implement the recommendations contained in its sixth annual report.

I. INTRODUCTION

This is the sixth 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. David R. Hastings III Chair | <i>Senate member of Judiciary Committee, appointed by the President of the Senate</i> |
| Rep. Joan M. Nass | <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> |
| Shenna Bellows | <i>Representing the public, 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> |
| Michael Cianchette | <i>Representing State Government interests, appointed by the Governor</i> |
| Richard Flewelling | <i>Representing municipal interests, appointed by the Governor</i> |
| James T. Glessner | <i>Member of the Judicial Branch</i> |
| A.J. Higgins | <i>Representing broadcasting 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> |

| | |
|---------------|--|
| Judy Meyer | <i>Representing newspaper publishers, appointed by the Speaker of the House</i> |
| Kelly Morgan | <i>Representing newspapers and other press interests, appointed by the President of the Senate</i> |
| Linda Pistner | <i>Attorney General's designee</i> |
| Harry Pringle | <i>Representing school interests, appointed by the Governor</i> |
| Mike Violette | <i>Representing broadcasting interests, appointed by the Speaker of the House</i> |

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

By law, the Advisory Committee must meet at least four times per year. During 2011, the Advisory Committee met four times: July 15, September 29, November 17 and December 8. Subcommittee meetings were held on September 1, 12, and 29; October 6, 7, 14 and 21; and November 10 and 17; and December 8. All of the 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.

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.

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. During 2011, the Advisory Committee identified 2 court decisions summarized below.

2011 Maine Supreme Judicial Court Decision

- ◆ **Anastos v. Town of Brunswick**, 2001 ME 41. The Supreme Judicial Court upheld the application of a public records exception to a feasibility study submitted as part of a joint development project in which the developer was seeking town approval of a tax increment financing agreement. The Court ruled in favor of the Town of Brunswick that refused to release the study submitted by the developer, finding that the entire report was protected by the public records exception shielding proprietary information submitted in the course of economic development projects. The Law Court reviewed de novo the public records exception in Title 5, section 13119-A, stating that it was aware of the need to "balance transparency of government action with the protection of sensitive information." The Superior Court had conducted an *in camera* review of the feasibility study and found that the entire work product was protected from public disclosure because it contained not only specific information but also an analysis of the information that would be advantageous to the developer's competitors and would disadvantage the developer if released. The Law Court

agreed and stated that a document that contains a “commercially advantageous collection or analysis of information” may be found to be confidential as a whole; neither release nor redaction is appropriate in such situations.

The Law Court reviewed the legislative history of the public records exception protecting proprietary information submitted for economic development assistance and found that the statute constitutes a “legislative balancing of equities and a clear intent to stimulate economic development.” The Court identified the feasibility study as the type of document contemplated by the Legislature in creating the public records exception. The protection from public disclosure was provided to encourage applicants to seek public economic development assistance; releasing this particular study even in redacted form would frustrate the clearly stated legislative intent.

2001 Maine Superior Court Decision

◆ **MacImage of Maine, LLC v. Androscoggin County, et al.**, (Me. Super. Ct., Cumb. Cty., Feb. 20, 2011) (Warren, J.). The Cumberland County Superior Court ruled in February 2011 in favor of MacImage of Maine, LLC and its general manager John Simpson, who had brought suit against six counties in 2010 seeking access to the computer database of records maintained by each county’s registry of deeds. MacImage’s plan to build a single website on which the land records of all counties are available for review and copying is dependent on MacImage’s ability to obtain the records of the registries of deeds both initially and on a regular basis for updates. MacImage requested the electronic bulk transfer of the records from each county, which the counties had not been willing or able to do at the price MacImage was willing to pay. The case against the counties was pending at the close of 2010.

The Superior Court determined that the Legislature’s amendment to Title 33, section 751 made clear that the Title 33 statute, and not the fees provisions of the Freedom of Access laws, applies to the establishment of copying fees for the records of the registry of deeds in each county. The Court found that §751 does not, however, authorize the counties to charge fees based on the overall cost of maintaining their data in electronic form. The Court then reviewed each county’s fees for the bulk transfer of records to MacImage, and found that each county’s fees were not reasonable and constituted constructive denial of MacImage’s public records requests. The Court ordered each county to provide a download of the requested records using county-specific cost formulas.

The appropriate balance for future requests, determined based on the factors in the amended statute, is to allocate some portion of a county’s overall database costs in setting a copying fee. The court said that cost of storage media, mailing costs and contractor and personnel costs actually incurred in the translation and copying process can be charged to the requester. “Amortized infrastructure costs” can be figured into counties’ per image charge for electronic copies only to the extent that the infrastructure in question relates to the cost of producing and making copies.

All six counties appealed the decision to the Maine Supreme Judicial Court. Five entities filed amicus briefs. Oral arguments are scheduled before the Law Court on Tuesday, December 13, 2011.

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 2010. Three subcommittees were appointed: 1) Legislative; 2) Public Records Exceptions; and 3) Bulk Records. Senator Hastings and Representative Nass, 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: Shenna Bellows, Michael Cianchette, Richard Flewelling, Ted Glessner, Mal Leary, William Logan, Kelly Morgan, Linda Pistner and Harry Pringle.

During 2011, the Legislative Subcommittee had six meetings; three of the meetings were joint meetings with the Bulk Records Subcommittee. The subcommittee was charged with several specific tasks.

Review of the draft revision of the Criminal History Record Information Act proposed by the Criminal Law Advisory Commission

The subcommittee received two presentations of a proposed re-draft of the Criminal History Record Information Act from Special Assistant Attorney General Charlie Leadbetter, a representative of the Criminal Law Advisory Commission. The Criminal History Record Information Act implicates public and confidential records. The subcommittee reviewed the draft revision, concentrating on the specific confidentiality provisions. The draft is broken into two pieces, the first focused on criminal history record information and the second creating a separate subchapter on intelligence and investigative information, a category of information that is not the same as criminal history. The Subcommittee agreed that the new language is much clearer with regard to what information is public and what information is confidential. The Subcommittee agreed to recommend that the full Advisory Committee approve the draft and that the Criminal Law Advisory Committee proceed with submitting the revision as proposed legislation.

Inquiry about whether a freedom of access request should specifically cite the law from Chris Parr, Staff Attorney for the Maine State Police, Department of Public Safety

The subcommittee discussed a request from Chris Parr, Staff Attorney in the Maine State Police, Department of Public Safety, asking the subcommittee to consider the question of what a FOA request is and whether a formal request that cites the FOA laws is necessary. The subcommittee agreed that formality is not and should not be required for a request, particularly for the general

member of the public making a request. The subcommittee did note that formality may become more necessary if changes to the law like the timelines proposed in LD 1465 are adopted.

Review of LD 1465, An Act to Amend the Laws Governing Freedom of Access

The Judiciary Committee carried over to the Second Regular Session LD 1465, An Act to Amend the Laws Governing Freedom of Access, and asked the Advisory Committee to review the bill and provide recommendations to the Judiciary Committee in January. The subcommittee received an overview presentation from the Maine Heritage Policy Center on LD 1465. The Maine Heritage Policy Center worked with Sen. Rosen and other stakeholders in drafting the bill and was the leading proponent of the bill before the Legislature. The subcommittee discussed each provision included in LD 1465 and developed recommendations for the Advisory Committee.

Public notice. The subcommittee opposed the change included in LD 1465 to require public notice to be given of public proceedings not less than 3 days prior to the public proceeding except in an emergency. The subcommittee agreed that the minimum of three days could easily become the standard practice of maximum notice, thus resulting in less notice of proceedings than is available now.

Form of request. In conjunction with the Bulk Records Subcommittee, the subcommittee agreed that a copy of a record should always be available in the form the record is kept, even in electronic form. The subcommittees developed proposed statutory language (different than proposed in LD 1465) to require an agency or official to provide access to an electronically stored record in the available medium of the requester's choice, unless the agency or official does not have the ability to separate or prevent the disclosure of any confidential information contained in a computer file.

The members also agreed to support clarification that requests can be by any means, including over the phone, and the copies can be provided by mailing, which could be more convenient for requestors and responders alike.

Fees and cost of access. Although LD 1465 does not propose any statutory changes related to fees, the subcommittee agreed by a vote of 5-4 to recommend an increase in the hourly fee for searching for, retrieving and compiling a public records request from \$10 per hour to \$15 per hour after the first hour of staff time per request.

Timelines. The subcommittee does not support the timelines included in LD 1465 as drafted. Members expressed a concern that it would be hard to develop a fixed timeline that would apply to all bodies and that it would be difficult for public bodies and officials to meet the timelines proposed in LD 1465; the current law's reasonable time standard is recognition by the Legislature that a single fixed-date approach may not fit everyone. The members recognized that current law allows a balancing test to consider the scope of the request and the staff time needed to respond, but also requires that agencies acknowledge the request within a reasonable time. Members stated that the "reasonable" standard in current law is a legal term of art that courts can

interpret on a case by case basis. While all of the subcommittee noted that the proposed timelines in LD 1465 are not likely to pass as drafted, some subcommittee members expressed support for a deadline because the “reasonable” standard in current law doesn’t give requestors or agencies a structure in which to work. Other members believed that a deadline will become the date that responses will be made, even if they could have been provided earlier. All agreed that they do not want to eliminate the opportunity for a citizen to walk up to the counter and ask for a public record; formalizing the process is not necessary. Establishing deadlines may require the use of a form for requests in order to track compliance with the deadlines.

As an alternative to a fixed timeline, the subcommittee (and the Bulk Records Subcommittee) agreed to require that a responding agency or official provide an estimate of when a copy of a requested record would be available, rather than setting hard deadlines. The estimate would have to be made in good faith and would be nonbinding.

Subcommittee members also support an effective Ombudsman as a resource to ensure timely compliance.

Remedies for violations of FOA laws. The subcommittee opposed the change proposed in LD 1465 to authorize the Superior Court to issue an injunction to enforce violations of the law. The subcommittee agreed that the court’s inherent powers include the power to issue an injunction and that no statutory change is necessary.

Public Access Officer. The subcommittee supported a requirement that each State agency, county and municipality appoint an existing employee to serve as the contact person for public records request. The subcommittee also supports a requirement that public access officers complete the same training in the Freedom of Access laws as elected officials. The subcommittee did not believe the detailed listing of responsibilities included in LD 1465 was necessary for public access officers to be effective.

Ombudsman position funding. The subcommittee supported funding the Ombudsman within the Attorney General’s Office as a full-time Assistant Attorney General position. As drafted, LD 1465 proposed funding for a part-time position.

Expansion of “working papers exception” to Governor

The subcommittee discussed the concerns raised by the Governor in a letter to the Advisory Committee about the use of the Freedom of Access laws for political purposes and to increase the workload of the Governor’s Office, particularly during the legislative session. At the request of the Governor’s deputy counsel and subcommittee member, Michael Cianchette, the subcommittee considered a draft proposal to create an exception from the definition of “public record”, modeled on the existing exception for the Legislature, for working papers and other documents used or maintained by the Governor or the Governor’s Office to prepare proposed legislation or reports during the Legislative session in which the proposed legislation or reports are prepared. The rationale for the exception is to allow policies to be developed freely and to

protect the mental processes of the Governor and his staff before decisions are made. All the records would become public, of course, upon distribution or the end of the legislative session.

The subcommittee recognized that the policy issue raised by the proposal brings focus to the inequity in the current law between the Legislative branch and the Executive branch of State government; the subcommittee's policy options are to broaden the exception to include the Governor and other public bodies or to repeal the Legislature's exception. Several members expressed support for the proposal based on the current inequity that protects the working papers and drafts prepared for and by the Legislature and Judiciary, but not the Executive. Other subcommittee members expressed concern about whether the existing exception for the Legislature was appropriate. The members expressed reservations about putting language like this into the law as it is useful for the public to know the government's thinking as policies and documents are developed.

The Subcommittee voted 5-4 in favor of expanding the exception, pending review of draft language. Because the subcommittee is significantly divided on the issue, members proposed that such a proposal, if it goes forward, should not be made part of LD 1465, but should be a separate piece of legislation.

Other issues (to be added after discussion on December 8th??)

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. Shenna Bellows is the chair of the subcommittee and the following serve as members: Perry Antone, Percy Brown, AJ Higgins and Linda Pistner.

During 2011, the Public Records Exception Subcommittee held four meetings. The subcommittee completed review of 31 existing public records exceptions; these are the remaining exceptions of the more than 120 exceptions in Titles 22 to 25 that the subcommittee began reviewing in 2010. 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, Bureau of Insurance, Maine Turnpike Authority, Maine Department of Transportation, Board of Licensure in Medicine, Attorney General's Office, Maine Health Data Organization, Northern New England Passenger Rail Authority, the Maine Hospital Association, Maine Trial Lawyers' Association and Maine Medical Mutual Insurance Company.

The subcommittee recommended that some statutes be amended and also recommended communicating with the appropriate legislative policy committees about confidentiality provisions in programs that have never been implemented.

See discussion of Advisory Committee's recommendations in Section VI.

Bulk Records Subcommittee. The Bulk Records Subcommittee's focus is to continue the Advisory Committee's consideration of how the freedom of access laws apply to bulk records requests. Michael Cianchette is the chair of the subcommittee and the following serve as members: Perry Antone, Percy Brown, Richard Flewelling, Mal Leary and Judy Meyer.

During 2011, the Bulk Records Subcommittee held 6 meetings; three of the meetings were joint meetings with the Legislative Subcommittee.

The subcommittee discussed the scope of its charge and agreed that issues related to bulk data go beyond records maintained by county registry of deeds and that bulk data requests impact a wide range of records and electronic databases maintained by government agencies. The subcommittee reviewed other states' laws that define bulk data and determined that other state laws do not provide any guidance for a clear statutory definition or approach to bulk data. The subcommittee decided to gather public input and suggestions for how to address bulk data issues.

The subcommittee held a public hearing on Friday, October 14th to get input from state and local government agencies and interested parties on four questions:

1. What is bulk data and how should it be defined?
2. What is the appropriate method of determining the cost that a requestor must pay for bulk data?
3. Should a requestor of bulk data be entitled to the records in the format and type of access requested? Should a distinction be made between a requester seeking access to records and a requester seeking ownership of records?
4. Should the law distinguish between bulk data requests of public records for commercial purposes versus requests for noncommercial purposes?

What is bulk data and how should it be defined?

The Subcommittee determined that there was no way to work through bulk records as an issue separate from and outside the Freedom of Access laws. The Subcommittee agreed that defining "bulk records" was problematic; they concluded that they did not need to define the term if bulk records requests could generally be treated like any other public records request. The Subcommittee reached consensus in finding that deeds are public records, and would otherwise fall under the FOA laws generally.

What is the appropriate method of determining the cost that a requestor must pay for bulk data?

The subcommittee discussed whether there should be a separate way to establish fees for bulk records requests. The subcommittee's discussion about fees was thorough; several options were considered, including specific authorization for agencies to conduct rulemaking before setting

fees, setting fees in statute and maintaining the current freedom of access laws' requirement that fees must be reasonable. The subcommittee tried to separate deeds from the rest of the issues, especially since there is a separate statute that addresses issues specifically related to fees of the Registries of Deeds. The subcommittee also noted that the Secretary of State's Office has statutory authority to work with InforME to establish filing fees and other fees relating to electronic access to records held by the Secretary of State.

A majority of the subcommittee concluded that fees for bulk records should not be handled separately from other public records. One member, Joe Brown, didn't agree with the rest of the Subcommittee and believed it would be appropriate to establish fees for bulk records requests differently based on whether the requestor will be using the information for commercial or noncommercial purposes. Mr. Brown noted that the State already draws distinctions between commercial and noncommercial purposes in other areas, such as registering motor vehicles and in shellfish licenses. Reflecting that same distinction in bulk records, especially with regard to deeds, would not be unreasonable.

Should a requestor of bulk data be entitled to the records in the format and type of access requested? Should a distinction be made between a requester seeking access to records and a requester seeking ownership of records?

In discussing how responses to record requests should be formatted (electronic, paper, etc.), the subcommittee found common ground with the Legislative Subcommittee and they approached this issue together. The subcommittees agreed that a copy of a record should always be available in the form the record is kept, even in electronic form. The subcommittees developed proposed statutory language to require an agency or official to provide access to an electronically stored record in the available medium of the requester's choice, unless the agency or official does not have the ability to separate or prevent the disclosure of any confidential information contained in a computer file.

As for whether a distinction exists between accessing a record and owning a record, the subcommittee agreed that the records are owned by the public. The distinction may be important if access or costs are dependent on whether the requester is seeking the public records for a commercial purpose.

Should the law distinguish between bulk data requests of public records for commercial purposes versus requests for noncommercial purposes?

A majority of the subcommittee members determined that the freedom of access laws should make no distinction based on whether a requester is seeking a record for a commercial purpose. The members expressed concern that making a distinction between commercial and noncommercial request would require agencies and officials to investigate the motivation and purpose of requests. The members did not believe that a process like this could be applied uniformly across the state in both small towns and large State agencies. Again, Mr. Brown did not agree with the subcommittee; he reiterated his opinion that there is a difference between the

use of public records or bulk data like deeds for commercial use versus personal use and that it is reasonable for the law to recognize that distinction.

See discussion of Advisory Committee's recommendations in Section VI.

V. ACTIONS RELATED TO RIGHT TO KNOW ADVISORY COMMITTEE RECOMMENDATIONS CONTAINED IN FIFTH ANNUAL REPORT

The Right to Know Advisory Committee made several recommendations in its fifth annual report. The actions taken in 2011 as a result of those recommendations are summarized below.

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| <p>Recommendation: Continue without modification, amend and repeal the specified existing public records exceptions in Titles 22 through 25</p> | <p>Action: The Judiciary Committee accepted the recommendations of the Advisory Committee with regard to specific public records exceptions as proposed in Part A of LD 1154, enacted as Public Law 2011, chapter 320.</p> |
| <p>Recommendation: Amend the freedom of access laws to clearly state that all forms of communications, including electronic mail, not be used to defeat the purposes of the freedom of access laws</p> | <p>Action: The Judiciary Committee accepted the recommended statutory language of the Advisory Committee as proposed in Part B of LD 1154, enacted as Public Law 2011, chapter 320.</p> |
| <p>Recommendation: Retain the existing penalty provisions of the freedom of access laws</p> | <p>Action: No legislative changes have been made to the penalty provisions.</p> |
| <p>Recommendation: Take no action concerning the application of the freedom of access laws to partisan caucuses</p> | <p>Action: No changes have been made in law or the Legislature's rules relating to partisan caucuses.</p> |
| <p>Recommendation: Include a simple but noticeable statement on all State webpages that all aspects of communications with</p> | <p>Action: No legislative changes have been made, although the issue was discussed at the Freedom of Access training for legislators in December 2010.</p> |

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| the State, including an individual's email address may be considered public records | |
| Recommendation: Retain the Central Voter Registry System's confidentiality provisions as enacted by Public Law 2009, chapter 564 | Action: No legislative changes have been made to the Central Voter Registry System's confidentiality provisions. |
| Recommendation: Amend the freedom of access laws to clarify that Social Security Numbers are not public records | Action: The Judiciary Committee accepted the recommended statutory language of the Advisory Committee as proposed in Part E of LD 1154, enacted as Public Law 2011, chapter 320. |
| Recommendation: Enact legislation to require records of public proceedings | Action: The Judiciary Committee accepted the recommended statutory language of the Advisory Committee as proposed in Part C of LD 1154, enacted as Public Law 2011, chapter 320. |
| Recommendation: Enact legislation to expand the scope of the process of reviewing proposed public records exceptions to include access issues | Action: The Judiciary Committee accepted the recommended statutory language of the Advisory Committee as proposed in Part D of LD 1154, enacted as Public Law 2011, chapter 320. |
| Recommendation: Make improvements to the State's Freedom of Access Website www.maine.gov/foaa | Action: The suggested improvements have been forwarded to the Governor's Office and Office of Information Technology for consideration. |
| Recommendation: Support establishment of a project to provide freedom of access services to the public | Action: The Advisory Committee's Law School Extern, Diana DeJesus, has developed a draft Citizen's Guide to Maine's Freedom of Access Laws for distribution and posting on the website. Opportunities for grant funding to support publication of the guide are being explored. |

VI. RECOMMENDATIONS

During 2011, the Advisory Committee engaged in the following activities and makes the recommendations summarized below.

Continue without modification, amend and repeal the following existing public records exceptions in Titles 22 through 25

As required by law, the Advisory Committee reviewed the existing public records exceptions identified in Title 22 through Title 25. The Advisory Committee's recommendations are summarized below.

The Advisory Committee recommends that the following exceptions in Titles 22 through 25 be continued without modification.

- ◆ Title 22, section 1711-C, subsection 2, relating to hospital records concerning health care information pertaining to an individual
- ◆ Title 22, section 1828, relating to Medicaid and licensing of hospitals, nursing homes and other medical facilities and entities
- ◆ Title 22, section 2706, relating to prohibition on release of vital records in violation of section; recipient must have "direct and legitimate interest" or meet other criteria
- ◆ Title 22, section 2706-A, subsection 6, relating to adoption contact files
- ◆ Title 22, section 2769, subsection 4, relating to adoption contact preference form and medical history form
- ◆ Title 22, section 3022, subsections 8, 12 and 13, relating to medical examiner information
- ◆ Title 22, section 4008, subsection 1, relating to child protective records
- ◆ Title 22, section 8824, subsection 2, relating to the newborn hearing program
- ◆ Title 22, section 8943, relating to the registry for birth defects
- ◆ Title 23, section 1980, subsection 2-B, relating to recorded images used to enforce tolls on the Maine Turnpike
- ◆ Title 23, section 1982, relating to patrons of the Maine Turnpike
- ◆ Title 23, section 4251, subsection 10, relating to records in connection with public-private transportation project proposals of at least \$25,000,000 or imposing new tolls
- ◆ Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act
- ◆ Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act
- ◆ Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels
- ◆ Title 24, section 216, subsections 2 and 5, relating to records of the Bureau of Insurance

The Advisory Committee recommends, with one dissenting vote, that the following exceptions in Titles 22 through 25 be continued without modification.

- ◆ Title 22, section 1848, subsection 1, relating to documents and testimony given to the Attorney General under Hospital and Health Care Provider Cooperation Act

- ◆ Title 24-A, section 6807, subsection 7, relating to individual identification data of viators

The Advisory Committee recommended that the following public records exceptions be amended. See draft legislation in Appendix C.

- ◆ Title 22, section 3034, subsection 2, relating to the Chief Medical Examiner missing persons files

The Advisory Committee recommended a statutory change to the following public records exception in order to remove references to information submitted by health care providers to a now-defunct State agency. See draft legislation in Appendix C.

- ◆ Title 22, section 8707, relating to the Maine Health Data Organization

The Advisory Committee recommended a statutory change, not intended to effect a substantive change, to the following public records exceptions in order to make confidentiality language as consistent as possible throughout the statutes. See draft legislation in Appendix C.

- ◆ Title 24-A, section 2393, relating to workers' compensation pool self-insurance and surcharges

The Advisory Committee recommended that the following public records exception be repealed as the provision is no longer administered as a result of a United States Supreme Court ruling. The Advisory Committee also wrote to the Joint Standing Committee on Health and Human Services to inform of the recommendation from the Attorney General that the entire section be repealed. See letter in Appendix __.

- ◆ Title 22, section 1555-D, subsection 1, relating to lists maintained by the Attorney General of known unlicensed tobacco retailers

The Advisory Committee recommended that the following statutory sections be reviewed by the relevant policy committees because the programs have not been implemented. See letters in Appendix __.

- ◆ Title 22, section 3188, subsection 4, relating to the Maine Managed Care Insurance Plan Demonstration for uninsured individuals
- ◆ Title 22, section 3192, subsection 13, relating to Community Health Access Program medical data

[Exceptions Still Under Review by Subcommittee and Advisory Committee---add to recommendation categories above as decisions are made]

- ◆ 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

- ◆ Title 22, section 1696-F, relating to the identity of a specific toxic or hazardous substance if the substance is a trade secret
- ◆ Title 22, section 8754, relating to medical sentinel events and reporting
- ◆ Title 23, section 63, relating to records of the right-of-way divisions of the Department of Transportation and the Maine Turnpike Authority
- ◆ Title 23, section 8115, relating to the Northern New England Passenger Rail Authority
- ◆ Title 24, section 2510, subsection 1, relating to professional competence reports under the Maine Health Security Act
- ◆ Title 24, section 2510-A, relating to professional competence review records under the Maine Health Security Act

- ◆ **Support the revision of the Criminal History Record Information Act proposed by the Criminal Law Advisory Commission (as recommended by the Legislative Subcommittee)**

- ◆ **Make no distinction under the freedom of access laws for a request for bulk records with regard to the fees for access or the purpose for which the request is made (as recommended by the Bulk Records Subcommittee)**

- ◆ **Enact legislation to require an agency or official to provide an estimate of the time within which the agency or official will comply with a public records request (as recommended by the Legislative Subcommittee)**

- ◆ **Enact legislation to increase the hourly fee that may be charged for the actual cost of searching for, retrieving and compiling the requested public record from \$10 per hour to \$15 per hour request (as recommended by the Legislative Subcommittee-not unanimous)**

- ◆ **Enact legislation to clarify that an agency or official shall provide access to an electronically stored record in the available medium of the requester's choice, which is defined as a printed document of the public record or the medium in which the record is stored except that an agency or official is not required to provide access to a computer file if the agency or official has no ability to separate or prevent disclosure of any confidential information contained in the file (as recommended by the Bulk Records and Legislative Subcommittees)**

- ◆ **Enact legislation to clarify that the new use of information technology may not reduce access to public records and to require State agencies to consider certain factors related to access to public records and protection of confidential information when purchasing or contracting for computer software and other information technology resources (as recommended by the Bulk Records and Legislative Subcommittees)**

- ◆ **Enact legislation to require each State agency, county and municipality to designate an existing employee as public access officer and require public access officers to complete**

the same training in the freedom of access laws as elected officials (as recommended by the Legislative Subcommittee)

- ◆ **Support funding for a full-time Ombudsman position within the Department of Attorney General (as recommended by the Legislative Subcommittee)**
- ◆ **Enact legislation concerning the confidentiality of working papers of the Office of Governor and a governing bodies and public officials to mirror the existing confidentiality exception available for working papers of the Legislature (as recommended by the Legislative Subcommittee-not unanimous)**

*[Discussion of each recommendation and
any additional recommendations to be added after final meeting]*

VII. FUTURE PLANS

In 2012, 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 22 through 25. *(Add in any issues that the Advisory Committee tables?)* The Advisory Committee looks forward to a full year of activities and working with the Governor, the Legislature and the Chief Justice of the Maine Supreme Judicial Court to implement the recommendations contained in its sixth annual report.

Reinsch, Margaret

From: Kent Hartsfield <khartsfield@webqa.net>
Sent: Wednesday, December 07, 2011 10:41 AM
To: Reinsch, Margaret
Subject: Re: Right To Know Advisory Committee
Attachments: FOIA Datasheet.pdf; Screen Shot - Internal request.PNG; Screen Shot - Request input.PNG; Screen Shot - request views.PNG; Sample Report.pdf

Peggy,

I just looked through my old emails and realized I hadn't sent you some additional information about our service. We are currently working with over 120 local and state government clients nationwide to help streamline their RTK Process. Here are a few of the more popular features of our system:

- Online Portal - Customized area through your website for citizens to create electronic RTK requests
- Automated Routing - Automatically routes, notifies, escalates, and assigns requests to different personnel based on the request type
- Escalation rules (convenient for media requests or other high profile types of requests)
- Letter Creator and Manager (easily manage letter templates)
- Prior Request service - Quickly search prior requests for related issues and documents
- Archive - Incoming requests are automatically archived and viewable on your website
- Reporting - Over 30 standard reports and a custom report wizard
- Fee Payments - Creates invoices/letters straight from the system for any fees imposed

I am also attaching a short datasheet about the system, a couple screenshots of the internal managing system, and a sample report that you can create from the system. Some of this information might not make sense looking at static images, but it should give you sense that we have thought about every possible scenario when it comes to the RTK process.

If you or any members of the RTK Advisory Committee have any questions, please don't hesitate to give me a ring or reply.

Thanks again,
Kent

On Fri, Dec 2, 2011 at 1:14 PM, Reinsch, Margaret <Margaret.Reinsch@legislature.maine.gov> wrote:

Hi, Kent –

I just spoke with Senator Hastings. The agenda for next Thursday is pretty tight, especially with it being the last meeting of the year, and he does not want to try to add one more thing that isn't already on the Advisory Committee's docket for the year. We aren't even sure if the Right to Know Advisory Committee is the right audience for your presentation.

If you have any materials you can send me, however, I will be happy to share them with all the Advisory Committee members. Maybe they or their constituents would be in a position to use the services and would therefore like to hear more and schedule you for a presentation.

Thanks for staying on top of this.

Peggy

THE OPEN RECORDS SYSTEM FOR GOVERNMENT

Transforming the Open Records
Process from a Manual, Paper Process
to an Automated One



About the FOIA Request System

GovQA is WebQA's platform that leads the country in Citizen Request Management for city and county governments. **GovQA** unites a full-scale service tool for local governments with a dynamic knowledge-base capability. Today these technologies combine to help cities and counties ranging in population size from 1,000 citizens to over one million citizens.

The FOIA Request System captures all requests received by letter, web email, fax, or walk-in. It handles all aspects of the request process by logging, routing, managing, calculating associated fees, generating letters and delivering the required documents. This also allows government groups the ability to meet and exceed all state FOIA compliance rules.

Benefits

- Faster Response Times and more consistent handling of requests
- Automated Management eliminates the manual, paper and spreadsheet process
- Complete Insight on staff time, staff costs, response times, communications, and more.
- Reduces Requests with knowledgebase of information and documents
- Finally...

Complete. Easy. Affordable.

Features

Fee Tracking

Track all fees, including waived fees

Time Tracking

Easily track all staff time devoted to one or all requests

Reporting

Over 30 standard reports and custom report writer

Prior Request Searching

Quickly search prior requests eliminating duplication

Appeals Processing

Manages all requests in appeals or AG opinion status

Custom Business Rules

Automatically routes, notifies, escalates, and assigns

Escalation Rules

Automatically escalates any response delays and notifies staff

Letter and Email Manager

Easily create and manage letters and email notifications

Payments

Creates estimate letters with online payment option for fees

Security

Highest level of security with User Profiles for staff

Kent Hartsfield

Senior Accounts Manager

khartsfield@webqa.net | Tel: 630.633.7305

Reference No
W000476-110311

Create Date
11/3/2011 11:12 AM

Update Date
11/3/2011 11:25 AM

Completed/Closed
No

Required Completion Date
11/17/2011

Status
Assigned

Priority
Medium

Assigned Dept
City Clerk

Assigned Staff
Mark Turner

Customer Name
Senior Account Manager Kent Hartsfield

Email Address
khartsfield@webqa.net

Phone

- Browse
- Answers
- Requests
- All AG Requests
- All Open Activities Assigned to Me
- All Open Requests
- All Open Requests Assigned to Me
- All Open Requests Assigned to My
- All Requests

Click to manage views

- Search
- Create
- Recently Viewed

Create a New Request

Select Customer Create Request

Save Save and Add Again Save and Return Return To Search Cancel

Request Details

*Request Type: FOIA Request
Source: Walk-In

Customer Details

Title:
First Name:
Last Name:
Customer Email:
Address 1:
Address 2:
City:
State:
Zip:

FOIA Request Details

*Type of Information Requested: Please Select One

**Describe the document(s) you are requesting:

Click to manage views

All Open Requests

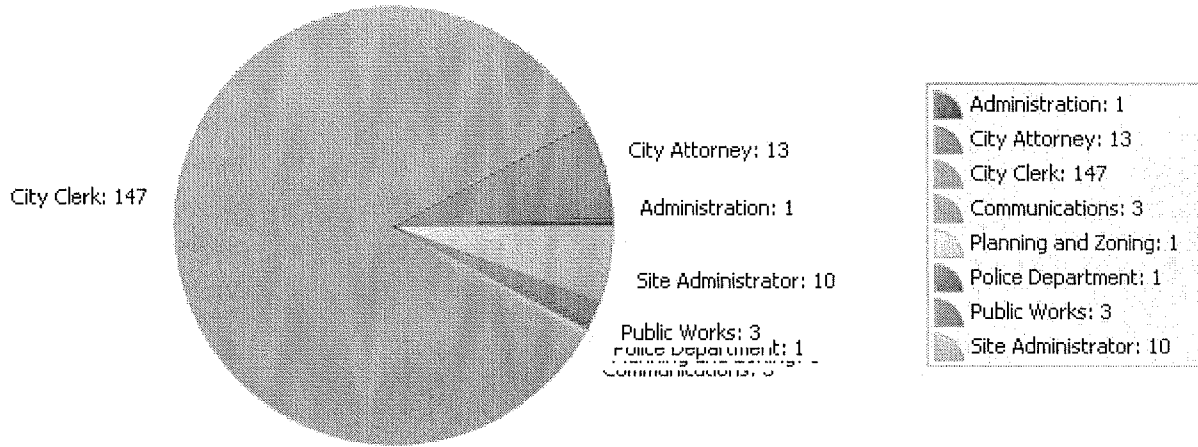
Displaying records 1 to 25 of 153

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| <input type="checkbox"/> W000468-111711 | FOIA Request | Assigned | City Clerk | Mark Turner | khartsfield@webqa.net | 11/17/2011 8:29 AM | 11/17/2011 8:12 AM |
| <input type="checkbox"/> W000467-111611 | FOIA Request | Assigned | City Clerk | Mark Turner | khartsfield@webqa.net | 11/16/2011 1:56 PM | 11/16/2011 1:46 PM |
| <input type="checkbox"/> W000466-111611 | FOIA Request | Assigned | City Clerk | Mark Turner | khartsfield@webqa.net | 11/16/2011 9:28 AM | 11/16/2011 9:11 AM |
| <input type="checkbox"/> W000465-111411 | FOIA Request | Assigned | City Clerk | Mark Turner | webqa2@webqa.net | 11/14/2011 7:35 AM | 11/14/2011 7:35 AM |
| <input type="checkbox"/> W000464-111111 | FOIA Request | Assigned | City Clerk | Mark Turner | khartsfield@webqa.net | 11/11/2011 11:29 AM | 11/11/2011 11:13 AM |
| <input type="checkbox"/> W000463-111011 | FOIA Request | Assigned | City Clerk | Mark Turner | khartsfield@webqa.net | 11/10/2011 2:23 PM | 11/10/2011 2:12 PM |
| <input type="checkbox"/> W000462-111011 | FOIA Request | Assigned | City Clerk | Mark Turner | khartsfield@webqa.net | 11/10/2011 8:35 AM | 11/10/2011 8:22 AM |
| <input type="checkbox"/> W000461-110911 | FOIA Police Request | Assigned | City Clerk | Mark Turner | khartsfield@webqa.net | 11/9/2011 1:50 PM | 11/9/2011 1:50 PM |
| <input type="checkbox"/> W000460-110911 | Procurement | New | Site Administrator | Kent Hartsfield | khartsfield@webqa.net | 11/9/2011 1:23 PM | 11/9/2011 1:10 PM |
| <input type="checkbox"/> W000459-110911 | Procurement | New | Site Administrator | Kent Hartsfield | khartsfield@webqa.net | 11/9/2011 12:09 PM | 11/9/2011 12:06 PM |
| <input type="checkbox"/> W000458-110911 | Procurement | New | Site Administrator | Kent Hartsfield | khartsfield@webqa.net | 11/9/2011 11:00 AM | 11/9/2011 11:00 AM |
| <input type="checkbox"/> W000477-110311 | FOIA Request | Assigned | City Clerk | Mark Turner | khartsfield@webqa.net | 11/3/2011 3:20 PM | 11/3/2011 3:11 PM |
| <input type="checkbox"/> W000476-110311 | FOIA Request | Assigned | City Clerk | Mark Turner | khartsfield@webqa.net | 11/3/2011 11:25 AM | 11/3/2011 11:12 AM |
| <input type="checkbox"/> W000475-110211 | FOIA Request | Assigned | City Clerk | Mark Turner | khartsfield@webqa.net | 11/2/2011 12:25 PM | 11/2/2011 12:16 PM |
| <input type="checkbox"/> W000474-110211 | FOIA Request | Assigned | City Clerk | Mark Turner | khartsfield@webqa.net | 11/2/2011 10:26 AM | 11/2/2011 10:12 AM |
| <input type="checkbox"/> W000473-103111 | FOIA Request | Assigned | City Clerk | Mark Turner | khartsfield@webqa.net | 10/31/2011 8:30 AM | 10/31/2011 8:15 AM |
| <input type="checkbox"/> W000472-102411 | FOIA Request | Assigned | City Clerk | Mark Turner | khartsfield@webqa.net | 10/24/2011 1:02 PM | 10/24/2011 12:49 PM |
| <input type="checkbox"/> W000471-102411 | FOIA Request | Assigned | City Clerk | Mark Turner | khartsfield@webqa.net | 10/24/2011 10:37 AM | 10/24/2011 10:21 AM |
| <input type="checkbox"/> W000470-101911 | FOIA Request | Assigned | City Clerk | Mark Turner | khartsfield@webqa.net | 10/26/2011 8:35 AM | 10/19/2011 9:27 AM |
| <input type="checkbox"/> W000469-101611 | FOIA Request | Assigned | City Clerk | Nikki Mocerino | khartsfield@webqa.net | 10/18/2011 9:31 AM | 10/18/2011 9:18 AM |

Activity

Run Date: 12/5/2011 8:43:01 AM

Activity



| Assigned Dept | Assigned Staff | Create Date | Close Date | Created By | Request Status | Request Type |
|---------------------|----------------|-------------|------------|----------------------|-------------------------|--------------|
| Public Works | Mark Turner | 1/6/2008 | | System Administrator | Send to Attorney | FOIA Request |
| Communications | Roger Edwards | 3/27/2009 | 9/14/2010 | | Assigned | FOIA Request |
| City Clerk | Mike Walker | 8/1/2010 | 6/1/2011 | | Full Release | FOIA Request |
| Communications | Dana Kirby | 4/1/2010 | | | Assigned | FOIA Request |
| Planning and Zoning | Mike Walker | 4/3/2010 | 7/14/2009 | | Assigned | FOIA Request |
| Administration | Mark Turner | 4/9/2009 | 7/14/2009 | | Clarification Requested | FOIA Request |
| City Clerk | Doug Shumway | 5/27/2009 | 7/2/2009 | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 5/28/2009 | 7/2/2009 | | Sent to AG for Opinion | FOIA Request |
| City Clerk | Doug Shumway | 7/2/2009 | 7/14/2009 | | Ready for Review | FOIA Request |
| City Clerk | Doug Shumway | 7/6/2010 | 7/14/2009 | | Assigned | FOIA Request |
| Communications | Dana Kirby | 5/14/2010 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 5/20/2010 | | | Sent to AG for Opinion | FOIA Request |
| Public Works | Mark Turner | 7/12/2010 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 7/12/2010 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 10/13/2010 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 10/21/2010 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 10/27/2010 | | Doug Shumway | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 10/27/2010 | | Doug Shumway | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 11/10/2010 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 1/11/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 1/14/2011 | | | Assigned | FOIA Request |

| Assigned Dept | Assigned Staff | Create Date | Close Date | Created By | Request Status | Request Type |
|-------------------|----------------|-------------|------------|-------------|-------------------------|--------------|
| City Clerk | Doug Shumway | 2/2/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 2/9/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 2/23/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 2/23/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 2/28/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 3/1/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 3/2/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 3/2/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 3/8/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 3/23/2011 | | | Clarification Requested | FOIA Request |
| City Clerk | Doug Shumway | 4/5/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 4/8/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 5/5/2011 | 5/5/2011 | | Full Release | FOIA Request |
| City Clerk | Doug Shumway | 5/10/2011 | 5/10/2011 | | Full Release | FOIA Request |
| City Clerk | Doug Shumway | 5/10/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 5/10/2011 | | sales sales | Assigned | FOIA Request |
| Public Works | Mark Turner | 5/10/2011 | | sales sales | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 5/10/2011 | | sales sales | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 5/11/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 5/16/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 5/16/2011 | | sales sales | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 5/17/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 5/17/2011 | | sales sales | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 5/19/2011 | | | Assigned | FOIA Request |
| City Attorney | Doug Shumway | 5/19/2011 | | sales sales | Sent to AG for Opinion | FOIA Request |
| City Attorney | Mark Turner | 5/19/2011 | | sales sales | Sent to AG for Opinion | FOIA Request |
| City Attorney | Charles Ford | 5/19/2011 | | sales sales | Sent to AG for Opinion | FOIA Request |
| Police Department | Frank Williams | 5/19/2011 | | sales sales | Assigned | FOIA Request |
| City Attorney | Doug Shumway | 5/19/2011 | | | Sent to AG for Opinion | FOIA Request |
| City Attorney | Doug Shumway | 5/19/2011 | | sales sales | Sent to AG for Opinion | FOIA Request |
| City Clerk | Doug Shumway | 5/23/2011 | | | Assigned | FOIA Request |
| City Attorney | | 5/23/2011 | | sales sales | Sent to AG for Opinion | FOIA Request |
| City Attorney | Doug Shumway | 5/24/2011 | | | Sent to AG for Opinion | FOIA Request |
| City Attorney | Amy West | 5/24/2011 | | sales sales | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 5/25/2011 | | | Assigned | FOIA Request |
| City Attorney | Betty Rose | 5/25/2011 | | sales sales | Sent to AG for Opinion | FOIA Request |

| Assigned Dept | Assigned Staff | Create Date | Close Date | Created By | Request Status | Request Type |
|--------------------|----------------|-------------|------------|-------------|-------------------------|--------------|
| City Attorney | Doug Shumway | 5/26/2011 | | | Sent to AG for Opinion | FOIA Request |
| City Attorney | Doug Shumway | 5/26/2011 | | | Sent to AG for Opinion | FOIA Request |
| City Attorney | Dana Kirby | 5/26/2011 | | sales sales | Sent to AG for Opinion | FOIA Request |
| City Attorney | | 6/1/2011 | | | Appeal - Initiated | FOIA Request |
| City Clerk | Doug Shumway | 6/1/2011 | 7/14/2011 | | Full Release | FOIA Request |
| City Clerk | Doug Shumway | 6/1/2011 | 7/14/2011 | sales sales | Full Release | FOIA Request |
| City Clerk | Doug Shumway | 6/2/2011 | 7/14/2011 | | Full Release | FOIA Request |
| City Clerk | Doug Shumway | 6/2/2011 | 7/14/2011 | sales sales | Full Release | FOIA Request |
| City Clerk | Doug Shumway | 6/7/2011 | 7/14/2011 | | Full Release | FOIA Request |
| City Clerk | Doug Shumway | 6/7/2011 | 7/14/2011 | | Full Release | FOIA Request |
| City Clerk | Doug Shumway | 6/7/2011 | | sales sales | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 6/7/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 6/7/2011 | | sales sales | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 7/14/2011 | | | Assigned | FOIA Request |
| Site Administrator | sales sales | 7/25/2011 | | | Clarification Requested | FOIA Request |
| City Clerk | Doug Shumway | 7/26/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 7/26/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 7/28/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 7/28/2011 | | | Assigned | FOIA Request |
| Site Administrator | sales sales | 7/28/2011 | | | Clarification Requested | FOIA Request |
| City Clerk | Doug Shumway | 7/28/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 7/28/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 7/28/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 7/28/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 7/28/2011 | | | Assigned | FOIA Request |
| Site Administrator | sales sales | 7/29/2011 | | | Clarification Requested | FOIA Request |
| Site Administrator | sales sales | 8/2/2011 | | | Clarification Requested | FOIA Request |
| City Clerk | Doug Shumway | 8/3/2011 | | | Clarification Requested | FOIA Request |
| City Clerk | Doug Shumway | 8/3/2011 | | | Clarification Requested | FOIA Request |
| City Clerk | Doug Shumway | 8/3/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 8/3/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 8/3/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 8/3/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 8/3/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 8/3/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 8/3/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 8/3/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 8/3/2011 | | | Assigned | FOIA Request |

| Assigned Dept | Assigned Staff | Create Date | Close Date | Created By | Request Status | Request Type |
|--------------------|----------------|-------------|------------|------------|-------------------------|--------------|
| City Clerk | Doug Shumway | 8/3/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 8/3/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 8/3/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 8/3/2011 | | | Assigned | FOIA Request |
| City Clerk | Doug Shumway | 8/4/2011 | | | Clarification Requested | FOIA Request |
| Site Administrator | sales sales | 8/4/2011 | | | Clarification Requested | FOIA Request |
| Site Administrator | sales sales | 8/4/2011 | | | Clarification Requested | FOIA Request |

Public Records Exceptions Subcommittee
Proposed draft language changes

Exception #66 Professional competence reports

Sec. 1. 24 MRSA §2505 is amended to read:

§2505. Committee and other reports

Any professional competence committee within this State and any physician licensed to practice or otherwise lawfully practicing within this State shall, and any other person may, report the relevant facts to the appropriate board relating to the acts of any physician in this State if, in the opinion of the committee, physician or other person, the committee or individual has reasonable knowledge of acts of the physician amounting to gross or repeated medical malpractice, habitual drunkenness, addiction to the use of drugs, professional incompetence, unprofessional conduct or sexual misconduct identified by board rule. The failure of any such professional competence committee or any such physician to report as required is a civil violation for which a fine of not more than \$1,000 may be adjudged.

Except for specific protocols developed by a board pursuant to Title 32, section 1073, 2596-A or 3298, a physician, dentist or committee is not responsible for reporting misuse of alcohol or drugs or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol or drugs discovered by the physician, dentist or committee as a result of participation or membership in a professional review committee or with respect to any information acquired concerning misuse of alcohol or drugs or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol or drugs, as long as that information is reported to the professional review committee. Nothing in this section may prohibit an impaired physician or dentist from seeking alternative forms of treatment.

The confidentiality of reports made to a board under this section is governed by this chapter.

Sec. 2. 24 MRSA § 2510, sub-§1 is amended to read:

§2510. Confidentiality of information

1. Confidentiality; exceptions. Any reports, information or records received and maintained by the board pursuant to this chapter, including any material received or developed by the board during an investigation shall be confidential, except for information and data that is developed or maintained by the board from reports or records

Public Records Exceptions Subcommittee
Proposed draft language changes

received and maintained pursuant to this chapter or by the board during an investigation and that does not identify or permit identification of any patient or physician; provided that the board may disclose any confidential information only:

- A. In a disciplinary hearing before the board or in any subsequent trial or appeal of a board action or order relating to such disciplinary hearing;
- B. To governmental licensing or disciplinary authorities of any jurisdiction or to any health care providers or health care entities located within or outside this State that are concerned with granting, limiting or denying a physician's privileges, but only if the board includes along with the transfer an indication as to whether or not the information has been substantiated by the board;
- C. As required by section 2509, subsection 5;
- D. Pursuant to an order of a court of competent jurisdiction; ~~or~~
- E. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any patient or physician is first deleted; or
- F. To other state or federal agencies when the information contains evidence of possible violations of laws enforced by those agencies.

2. Confidentiality of orders in disciplinary proceedings. Orders of the board relating to disciplinary action against a physician, including orders or other actions of the board referring or scheduling matters for hearing, shall not be confidential.

2-A. Confidentiality of letters of guidance or concern. Letters of guidance or concern issued by the board pursuant to Title 10, section 8003, subsection 5, paragraph E, are not confidential.

3. Availability of confidential information. In no event may confidential information received, maintained or developed by the board, or disclosed by the board to others, pursuant to this chapter, or information, data, incident reports or recommendations gathered or made by or on behalf of a health care provider pursuant to this chapter, be available for discovery, court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision or failure to provide health care services. This confidential information includes reports to and information gathered by a professional review committee.

Public Records Exceptions Subcommittee
Proposed draft language changes

4. Penalty. Any person who unlawfully discloses such confidential information possessed by the board shall be guilty of a Class E crime.

5. Physician-patient privilege; proceedings by board. The physician-patient privilege shall, as a matter of law, be deemed to have been waived by the patient and shall not prevail in any investigation or proceeding by the board acting within the scope of its authority, provided that the disclosure of any information pursuant to this subsection shall not be deemed a waiver of such privilege in any other proceeding.

6. Disciplinary action. Disciplinary action by the Board of Licensure in Medicine shall be in accordance with Title 32, chapter 48; disciplinary action by the Board of Osteopathic Licensure shall be in accordance with Title 32, chapter 36.

SUMMARY

This amendment makes 2 changes with regard to the treatment of confidential information held by a medical licensing board.

Title 24, section 2505 allows professional competence committees, physicians and any other person to report a physician to the appropriate licensing board. This amendment clarifies that the confidentiality provisions of the Maine Health Security Act, of which section 2505 is a part, govern the confidentiality of all such reports.

Title 24, section 2510 is amended to authorize medical licensing boards to share confidential information with state and federal agencies when the information contains evidence of possible violations of laws enforced by those agencies.

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Public Records Exceptions Subcommittee
Proposed letter to ENR and HHS Committees

Exceptions 18 and 19

Sen. Thomas B. Saviello, Senate Chair
Rep. James M. Hamper, House Chair
Joint Standing Committee on Environment and Natural Resources
100 State House Station
Augusta, Maine 04333

Sen. Earle L. McCormick
Rep. Meredith N. Strang Burgess
Joint Standing Committee on Health and Human Services
100 State House Station
Augusta, Maine 04333

Dear Sen. Saviello, Sen. McCormick, Rep. Hamper and Rep. Strang Burgess:

The Public Records Exceptions Subcommittee of the Right to Know Advisory Committee is reviewing existing public records exceptions in the statutes, and is focusing on the exceptions found in Titles 22 through 25. The Subcommittee is expected to review and evaluate each public records exception and make a recommendation for either keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation.

As part of its review, the Subcommittee considered two exceptions in Title 22 within the "Community Right-to-Know Act" to address public concerns about hazardous substances. We understand that the program within the Department of Health and Human Services has never been implemented.

The Subcommittee worked on draft language to revise the confidentiality provisions to bring the language into conformity with the standard confidentiality wording and to make clear what information collected by the Department under the program would be considered public. Ultimately, however, we are reluctant to make recommendations concerning a program that has not been implemented.

We believe that the Department of Environmental Protection may have programs that parallel or overlap the purposes of the Community-Right-to-Know Act, and we know that the Maine Emergency Management Agency and county emergency management authorities also collect information and develop emergency plans concerning hazardous substances. We hope that your committees will find the time to review the existing programs and determine whether life should be breathed into the Community Right-to-Know Act and amended appropriately, or deleted completely.

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.

Public Records Exceptions Subcommittee
Proposed draft language changes

Exception # 57

Sec. 1. 23 MRSA § 63 is repealed and the following enacted in its place:

§63. Confidentiality of records held by Department of Transportation and Maine Turnpike Authority

1. Confidential records. The following records in the possession of the Department of Transportation and the Maine Turnpike Authority are confidential and may not be disclosed except as provided in this section:

A. Records and correspondence relating to negotiations for and appraisals of property; and

B. Records and data relating to engineering estimates of costs on projects to be put out to bid.

2. Engineering estimates. Engineering estimates of total project costs are public after the execution of project contracts.

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

Summary

This amendment clarifies that engineering estimates are public after the execution of project contracts.

Public Records Exceptions Subcommittee
Proposed draft language changes

Exception # 62 NNEPRA

Sec. . 23 MRSA §8115 is amended to read:

§8115. Obligations of authority

All expenses incurred in carrying out this chapter must be paid solely from funds provided to or obtained by the authority pursuant to this chapter. Any notes, obligations or liabilities under this chapter may not be deemed to be a debt of the State or a pledge of the faith and credit of the State; but those notes, obligations and liabilities are payable exclusively from funds provided to or obtained by the authority pursuant to this chapter. Pecuniary liability of any kind may not be imposed upon the State or any locality, town or landowner in the State because of any act, agreement, contract, tort, malfeasance, misfeasance or nonfeasance by or on the part of the authority or its agents, servants or employees. ~~The records and correspondence relating to negotiations, trade secrets received by the authority, estimates of costs on projects to be put out to bid and any documents or records solicited or prepared in connection with employment applications are confidential. The authority is deemed to have a lawyer-client privilege.~~

Sec. . 23 MRSA §8115-A is enacted to read:

§8115-A. Authority records

1. Confidential records. The following records of the authority are confidential:

A. Records and correspondence relating to negotiations of agreements to which the authority is a party or in which the authority has a financial or other interest. Once entered into, an agreement is not confidential;

B. Trade secrets;

C. Estimates prepared by or at the direction of the authority of the costs of goods or services to be procured by or at the expense of the authority; and

D. Any documents or records solicited or prepared in connection with employment applications, except that applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.

Public Records Exceptions Subcommittee
Proposed draft language changes

2. Lawyer-client privilege. The authority may claim the lawyer-client privilege in the same manner and circumstances as a corporation is authorized to do so.

SUMMARY

This amendment revises the confidentiality provisions that apply to the NNEPRA's records to clarify what records are not subject to public access.

This amendment provides that records and correspondence relating to negotiations of agreements are confidential, although the final agreements are not designated confidential by this language.

Trade secrets remain confidential.

This amendment clarifies that estimates of costs of goods or services to be procured by or at the expense of the authority are confidential *if the estimates are prepared by the authority or at the direction of the authority*. The estimates do not become public over time.

This amendment revises the employment application confidentiality to track that of State, county and municipal employee applicants. All documents relating to applicants are confidential except for records pertaining to the applicant who is hired, most of which become public. Personal contact information of public employees is not a public record.

This amendment clarifies the language concerning the lawyer-client privilege; it allows the authority to claim the lawyer-client privilege in the same manner and circumstances as a corporation is authorized to do so.

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1465

S.P. 456

In Senate, April 12, 2011

An Act To Amend the Laws Governing Freedom of Access

Reference to the Committee on Judiciary suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator ROSEN of Hancock.

Cosponsored by Senators: ALFOND of Cumberland, COLLINS of York, DIAMOND of Cumberland, FARNHAM of Penobscot, HILL of York, HOBBS of York, KATZ of Kennebec, LANGLEY of Hancock, MARTIN of Kennebec, MASON of Androscoggin, McCORMICK of Kennebec, PLOWMAN of Penobscot, RECTOR of Knox, SHERMAN of Aroostook, SNOWE-MELLO of Androscoggin, THIBODEAU of Waldo, WHITTEMORE of Somerset, Representatives: BEAVERS of South Berwick, DUNPHY of Embden, EVES of North Berwick, GUERIN of Glenburn, HARVELL of Farmington, HAYES of Buckfield, HINCK of Portland, O'CONNOR of Berwick, OLSEN of Phippsburg, ROSEN of Bucksport, SIROCKI of Scarborough, STRANG BURGESS of Cumberland, TURNER of Burlington.

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

2 Sec. 1. 1 MRSA §402, sub-§1-B is enacted to read:

3 1-B. Public access officer. "Public access officer" means the person fulfilling the
4 duties as described in section 413.

5 Sec. 2. 1 MRSA §406, as amended by PL 1987, c. 477, §4, is further amended to
6 read:

7 **§406. Public notice**

8 Public notice ~~shall~~ must be given for all public proceedings as defined in section 402,
9 if these proceedings are a meeting of a body or agency consisting of 3 or more persons.
10 This notice ~~shall~~ must be given ~~in ample time to allow public attendance not less than 3~~
11 days prior to the public proceeding and ~~shall~~ must be disseminated in a manner
12 reasonably calculated to notify the general public in the jurisdiction served by the body or
13 agency concerned. In the event of an emergency meeting, local representatives of the
14 media ~~shall~~ must be notified of the meeting, whenever practical, the notification to
15 include time and location, by the same or faster means used to notify the members of the
16 agency conducting the public proceeding.

17 Sec. 3. 1 MRSA §408, as amended by PL 2009, c. 240, §4, is further amended to
18 read:

19 **§408. Public records available for public inspection and copying**

20 **1. Right to inspect and copy.** Except as otherwise provided by statute, every person
21 has the right to inspect and copy any public record during the regular business hours of
22 the agency or official having custody of the public record within ~~a reasonable period of~~
23 ~~time after making a request to inspect or copy the public record~~ the time limits
24 established in section 408-A. An agency or official may request clarification concerning
25 which public record or public records are being requested, but in any case the agency or
26 official shall acknowledge receipt of the request within a reasonable period of time. A
27 person may request by telephone that a copy of the public record be mailed or e-mailed to
28 that person.

29 **2. Inspection, translation and copying scheduled.** Inspection, translation and
30 copying may be scheduled to occur at such time as will not delay or inconvenience the
31 regular activities of the agency or official having custody of the public record sought, as
32 long as the inspection, translation and copying occur within the time limits established in
33 section 408-A. The agency or official may use a 3rd party to make a copy of an original
34 public record, but a requester may not remove the original of a public record from the
35 agency or official.

36 **2-A. Form.** If a public record exists in electronic or magnetic form, the requester
37 may request a copy of the public record in a paper, electronic, magnetic or other medium,
38 specify the storage medium and request that the copy be provided by an electronic
39 transfer by the Internet or other means.

1 A. An agency or official shall provide a copy of the public record in the requested
2 medium if:

3 (1) The agency or official has the technological ability to produce the public
4 record in that medium or can obtain the assistance necessary to produce the
5 public record at a reasonable cost; and

6 (2) The requester agrees to pay the agency's or official's costs to purchase and
7 install any additional necessary computer software or hardware to accommodate
8 the request and to copy the public record in a requested medium.

9 B. If an agency or official cannot provide a copy of a public record in a requested
10 medium, the agency or official shall identify every medium in which the public
11 record can be provided for inspection and copying, which must include a paper copy,
12 and the requester must identify the medium that is acceptable to the requester.

13 **3. Payment of costs.** Except as otherwise specifically provided by law or court
14 order, an agency or official having custody of a public record may charge fees as follows.

15 A. The agency or official may charge a reasonable fee to cover the cost of copying.

16 B. The agency or official may charge a fee to cover the actual cost of searching for,
17 retrieving and compiling the requested public record of not more than \$10 per hour
18 after the first hour of staff time per request. Compiling the public record includes
19 reviewing and redacting confidential information.

20 C. If translation is necessary, the agency or official may charge a fee to cover the
21 actual cost of translation.

22 D. An agency or official may not charge for inspection.

23 E. If the requester requests that the public record be mailed, the agency or official
24 may charge a fee not greater than the actual cost of mailing the record.

25 **4. Estimate.** The agency or official shall provide to the requester an estimate of the
26 time necessary to complete the request and of the total cost. If the estimate of the total
27 cost is greater than \$20, the agency or official shall inform the requester before
28 proceeding. If the estimate of the total cost is greater than \$100, subsection 5 applies and
29 the estimate must be provided within 3 business days of the request.

30 **5. Payment in advance.** The agency or official may require a requester to pay all or
31 a portion of the estimated costs to complete the request prior to the translation, search,
32 retrieval, compiling and copying of the public record if:

33 A. The estimated total cost exceeds \$100; or

34 B. The requester has previously failed to pay a properly assessed fee under this
35 chapter in a timely manner.

36 **6. Waivers.** The agency or official may waive part or all of the total fee if:

37 A. The requester is indigent; or

38 B. Release of the public record requested is in the public interest because doing so
39 is likely to contribute significantly to public understanding of the operations or

1 activities of government and is not primarily in the commercial interest of the
2 requester.

3 **Sec. 4. 1 MRSA §408-A** is enacted to read:

4 **§408-A. Timelines**

5 **1. Availability; redaction; location; collection.** A public record must be made
6 available immediately upon request unless time is required to redact the record so as to
7 allow inspection and copying of only those portions of the record containing information
8 that is a public record or to locate and collect a record that is not in active use or that is in
9 storage.

10 **2. Certification.** If a public record is not available immediately, a public access
11 officer shall promptly certify that fact in writing to the requester, provide an explanation
12 for the delay and either provide an opportunity to inspect or copy the public record within
13 5 business days or mail or e-mail the public record within 5 business days.

14 **3. Large or multiple requests.** If a large public record is requested or multiple
15 public records are requested and the public access officer or a person acting on behalf of
16 the agency or official cannot in the exercise of due diligence produce the entire record or
17 multiple records within 5 business days after the request, the public access officer shall
18 provide the portion of the public record or public records when available. The requester
19 may waive this requirement and request to see the public record or public records
20 requested as a whole when available.

21 **4. Estimate.** If the cost to comply with a request to inspect or copy a public record
22 is greater than \$100, an estimate must be provided within 3 business days of the request.

23 **5. Failure to comply.** Failure to comply with this section may be treated as a denial
24 of a request and is subject to the enforcement provisions of this chapter.

25 **Sec. 5. 1 MRSA §408-B** is enacted to read:

26 **§408-B. Inspection by requester**

27 **1. Ten business days.** A requester shall complete an inspection of a public record
28 within 10 business days after the record is made available for inspection. If the
29 inspection is not completed within the 10-business-day period, a public access officer or a
30 person acting on behalf of the agency or official shall inform the requester that a written
31 request for additional time may be filed with the agency or official that has custody of the
32 public record.

33 **2. Additional periods.** An agency or official shall allow an additional 20 business
34 days beyond the period in subsection 1 for a requester to review a public record if the
35 requester filed a written request for additional time with the agency or official or its
36 public access officer or a person acting on behalf of the agency or official. If the
37 inspection is not completed upon the expiration of the additional 20 business days, the
38 public access officer or person acting on behalf of the agency or official shall inform the

1 requester that a 2nd written request for an additional 10 days may be filed with the
2 agency or official that has custody of the public record.

3 **3. Interruption of inspection.** The time allowed for inspection of a public record
4 may be interrupted if the agency or official needs to use the public record. If an agency or
5 official invokes this subsection, the public access officer, no later than 5 business days
6 after the agency or official takes the record back, shall inform the requester in writing the
7 dates that the public record will be available for the inspection to resume. The time
8 allowed for an inspection is tolled during the period in which the public record is being
9 used by the agency or official.

10 **Sec. 6. 1 MRSA §410**, as repealed and replaced by PL 1987, c. 477, §6, is
11 amended to read:

12 **§410. Violations; injunction**

13 For every willful violation of this subchapter, the state government agency or local
14 government entity whose officer or employee committed the violation shall be is liable
15 for a civil violation for which a forfeiture fine of not more than \$500 may be adjudged.

16 The Superior Court may issue an injunction to enforce the provisions of this chapter
17 against any agency or official. A motion for an injunction is privileged in respect to its
18 assignment for hearing and trial over all other actions except writs of habeas corpus and
19 actions brought by the State against individuals.

20 **Sec. 7. 1 MRSA §412**, as amended by PL 2007, c. 576, §2, is further amended to
21 read:

22 **§412. Public records and proceedings training for certain elected officials and**
23 **public access officers**

24 **1. Training required.** ~~Beginning July 1, 2008, an~~ An elected official and a public
25 access officer, subject to this section shall complete a course of training on the
26 requirements of this chapter relating to public records and proceedings. The official or
27 officer shall complete the training not later than the 120th day after the date the elected
28 official takes the oath of office to assume the person's duties as an elected official or the
29 person is designated as a public access officer pursuant to section 413, subsection 1. ~~For~~
30 ~~elected officials subject to this section serving in office on July 1, 2008, the training~~
31 ~~required by this section must be completed by November 1, 2008.~~

32 **2. Training course; minimum requirements.** The training course under subsection
33 1 must be designed to be completed by an official or a public access officer in less than 2
34 hours. At a minimum, the training must include instruction in:

- 35 A. The general legal requirements of this chapter regarding public records and public
36 proceedings;
- 37 B. Procedures and requirements regarding complying with a request for a public
38 record under this chapter; and
- 39 C. Penalties and other consequences for failure to comply with this chapter.

1 An elected official or public access officer meets the training requirements of this section
2 by conducting a thorough review of all the information made available by the State on a
3 publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding
4 specific guidance on how a member of the public can use the law to be a better informed
5 and active participant in open government. To meet the requirements of this subsection,
6 any other training course must include all of this information and may include additional
7 information.

8 **3. Certification of completion.** Upon completion of the training course required
9 under subsection 1, the elected official or public access officer shall make a written or an
10 electronic record attesting to the fact that the training has been completed. The record
11 must identify the training completed and the date of completion. The elected official
12 shall keep the record or file it with the public entity to which the official was elected. A
13 public access officer shall file the record with the agency or official that designated the
14 public access officer.

15 **4. Application.** This section applies to the following elected officials:

16 A. The Governor;

17 B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

18 C. Members of the Legislature elected after November 1, 2008;

19 E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers
20 of probate and budget committee members of county governments;

21 F. Municipal officers, clerks, treasurers, assessors and budget committee members of
22 municipal governments;

23 G. Officials of school units and school boards; and

24 H. Officials of a regional or other political subdivision who, as part of the duties of
25 their offices, exercise executive or legislative powers. For the purposes of this
26 paragraph, "regional or other political subdivision" means an administrative entity or
27 instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a
28 quasi-municipal corporation or special purpose district, including, but not limited to,
29 a water district, sanitary district, hospital district, school district of any type, transit
30 district as defined in Title 30-A, section 3501, subsection 1 or regional transportation
31 corporation as defined in Title 30-A, section 3501, subsection 2.

32 This section also applies to a public access officer designated pursuant to section 413,
33 subsection I.

34 **Sec. 8. 1 MRSA §413** is enacted to read:

35 **§413. Public access officer; responsibilities**

36 **1. Designation; responsibility.** Every agency or official shall designate to an
37 existing staff member the responsibility of serving as a public access officer to oversee
38 responses to requests for public records under this chapter. The public access officer
39 shall oversee the prompt response to a request to inspect or copy a public record.

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

4 3. Purpose; schedule. A public access officer or other person acting on behalf of an
5 agency or official may not inquire into the purpose of a request. A public access officer
6 may inquire as to the schedule or order of inspection or copying of a public record or a
7 portion of a public record under section 408.

8 4. Uniform treatment. A public access officer shall treat all requests for
9 information under this chapter uniformly without regard to the requester's position or
10 occupation, the person on whose behalf the request is made or the status of the requester
11 as a member of the media.

12 5. Comfort and facility. The public access officer shall ensure that a person may
13 inspect a public record in the offices of the agency or official in a manner that provides
14 reasonable comfort and facility for the full exercise of the rights of the public under this
15 chapter.

16 6. Unavailability of public access officer. The unavailability of a public access
17 officer may not delay a response to a request.

18 **Sec. 9. Appropriations and allocations.** The following appropriations and
19 allocations are made.

20 **ATTORNEY GENERAL, DEPARTMENT OF THE**

21 **Administration - Attorney General 0310**

22 Initiative: Provides funds for a part-time Assistant Attorney General position to act as the
23 public access ombudsman and general operating expenses required to carry out the
24 purposes of this Act.

25

| 26 GENERAL FUND | 2011-12 | 2012-13 |
|--|-----------------|-----------------|
| 27 POSITIONS - LEGISLATIVE COUNT | 0.500 | 0.500 |
| 28 Personal Services | \$62,120 | \$65,576 |
| 29 All Other | \$5,000 | \$5,000 |
| 30 | | |
| 31 GENERAL FUND TOTAL | <u>\$67,120</u> | <u>\$70,576</u> |

32 **SUMMARY**

33 This bill increases governmental transparency by enhancing the existing freedom of
34 access laws to provide deadlines for responses to requests for public records, to ensure
35 that requesters can access public records in the format requested and to require the
36 designation of public access officers for every agency and political subdivision.

1
2
3

The bill provides funding for an Assistant Attorney General position located in the Office of the Attorney General to act as the public access ombudsman, which is a part-time position.

Bulk Records and Legislative Subcommittees
Possible draft language

Sec. 1. 1 MRSA §400 is enacted to read:

§400. Short title

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

(Subchapter is currently §401 through §412)

Sec. 2. 1 MRSA §401-A is enacted to read:

§401-A. Public records; information technology policy

1. Policy. The new use of information technology to collect, maintain, store and retrieve public records may not reduce access to public records.

2. New information technology; considerations. Each agency shall consider the following in the purchase of and contracting for computer software and other information technology resources:

A. Maximizing public access to public records; and

B. Maximizing the exportability of public data while protecting confidential information that may be part of otherwise public records.

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

1-B. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.

Sec. 4. 1 MRSA §402, sub-§3, ¶¶C-2 and C-3 are enacted to read:
Exceptions to "public records":

Current legislative working papers exception:

C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and 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;

Bulk Records and Legislative Subcommittees
Possible draft language

C-2. Proposed legislation and reports until publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by the Governor or any employee of the Governor's office to prepare proposed legislation or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the proposed legislation or reports are prepared or considered or to which the proposed legislation or report is carried over;

C-3. Proposed legislation, reports, records, working papers, drafts, interoffice and intraoffice memoranda prepared for review, information or consideration by a (governing) body or duly-authorized official until: publicly distributed or otherwise provided to persons not in the service of the (governing) body or duly-authorized official; received by a quorum of the (governing) body; or the duly-authorized official makes a final decision to put forward the policy proposal reasonably related to the records or makes a final decision to abandon a policy proposal reasonably related to the records;

Sec. 5. 1 MRSA §408 is repealed.

Sec. 6. 1 MRSA §408-A is enacted to read:

§408-A, Public records available for inspection and copying

1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record within a reasonable time of making the request to inspect or copy the public record.

2. Clarification. An agency or official may request clarification concerning which public record or public records are being requested.

3. Acknowledgment; time estimate. The agency or official shall acknowledge receipt of the request within a reasonable period of time, and shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request. The agency or official shall make a good faith effort to fully respond to the request within the estimated time.

4. Refusals; denials. If (a body or?) an agency or official who has 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,

Bulk Records and Legislative Subcommittees
Possible draft language

stating the reason for the denial, within 5 working days of the request for inspection or copying by any person. [Currently part of §409, sub-§1, and currently uses the term "body" – what happens if we drop out?]

5. Schedule. Inspection, ~~translation~~ conversion and copying may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought. As used in this section, "reasonable office hours" includes all regular office hours of an agency or official. If a 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.

6. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge for inspection.

7. 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.

A. A request need not be made in person or in writing.

B. The agency or official shall mail the copy upon request.

8. Compile or create. An agency or official is not required to create or compile a record that does not exist.

9. Electronically stored public records. An agency or official shall provide access to an electronically stored public record in the available medium of the requester's choice. An available medium is a printed document of the public record or the medium in which the record is stored, except that a computer file is not an available medium if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in that file.

A. An agency or official is not required to provide an electronically stored public record in a different medium, structure, format or organization, but may do so at the agency's or official's discretion.

B. If ~~translation is necessary~~ in order to provide for inspection or copying the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format, the agency or official may charge a fee to cover the actual cost of ~~translation~~ conversion.

Bulk Records and Legislative Subcommittees
Possible draft language

C. This subsection does not require an agency or official to provide a requester with access to a computer terminal.

10. 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 copies of public records as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying.

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 \$10 \$15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.

C. An agency or official may not charge for inspection.

D. The agency or official may charge for the actual mailing costs to mail a copy of a record.

11. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than \$20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 12 applies.

12. Payment in advance. The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation conversion, search, retrieval, compiling and copying of the public record if:

A. The estimated total cost exceeds \$100; or

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.

13. Waivers. The agency or official may waive part or all of the total fee if:

A. The requester is indigent; or

B. Release of the public record requested is 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.

Bulk Records and Legislative Subcommittees
Possible draft language

Sec. 7. 1 MRSA §409 is amended to read:

§409. Appeals

1. Records. ~~If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person. 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 are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.~~

Sec. 8. 1 MRSA §412, as amended by PL 2007, c. 576, §2, is further amended to read:

§412. Public records and proceedings training for certain elected officials and public access officers

1. Training required. ~~Beginning July 1, 2008, an~~ An elected official and a public access officer, 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 officer shall complete the training not later than the 120th day after the date the elected 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. ~~For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.~~

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:

- A. The general legal requirements of this chapter regarding public records and public proceedings;
- B. Procedures and requirements regarding complying with a request for a public record under this chapter; and
- C. Penalties and other consequences for failure to comply with this chapter.

Bulk Records and Legislative Subcommittees
Possible draft language

An elected official or 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.

3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official or 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.

4. Application. This section applies to the following elected officials:

- 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;
- 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 units and school boards; and
- H. Officials of a regional or other political subdivision 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.

This section also applies to a public access officer designated pursuant to section 413, subsection 1.

Bulk Records and Legislative Subcommittees
Possible draft language

Sec. 9. 1 MRSA §413 is enacted to read:

§413. Public access officer; responsibilities

1. Designation; responsibility. Each State agency, county and municipality shall designate an existing employee as its public access officer to serve as the contact person for that agency, county or municipality with regard to requests for public records under this chapter. [add language about making name of contact available to public?? Need to mention that the contact person is not solely responsible for fulfilling request or that request has to be made to POA??]

2. 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.

Sec. 10. Appropriations and allocations. The following appropriations and allocations are made. *(Assumes April 1, 2012 effective date.)*

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration – Attorney General 0310

Initiative: Provides funds for one Assistant Attorney General position to serve as a Public Access Ombudsman.

| GENERAL FUND | 2011-12 | 2012-13 |
|------------------------------|-----------------|-----------------|
| Position – Legislative Count | 1.000 | 1.000 |
| Personal Services | \$18,160 | \$75,420 |
| All Other | \$5,178 | \$3,178 |
| GENERAL FUND TOTAL | \$23,338 | \$78,598 |

Public Records Exceptions Subcommittee final recommendations

Existing Public Records Exceptions, Titles 22 - 25
 Exceptions for review and discussion on December 8, 2011
 Revised 12/8/2011 12:22 PM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|---|-------------------|--|--|---|
| 18 | 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 | DHHS | <ul style="list-style-type: none"> No record of any experience No changes | 12/08/11: No change with letter to ENR and HHS (4-0) | |
| 19 | 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 | DHHS | <ul style="list-style-type: none"> No record of any experience No changes | 12/08/11: No change with letter to ENR and HHS (4-0) | |
| 54 | 22 | 8754 | Title 22, section 8754, relating to medical sentinel events and reporting | MHDO DHHS | <ul style="list-style-type: none"> No requests known Amend: "incidents reports and similar documents" | 12/08/11: No change but recommend further review of release of sentinel event info (4-0) | |
| 57 | 23 | 63 | Title 23, section 63, relating to records of the right-of-way divisions of the Department of Transportation and the Maine Turnpike Authority | MTA & DOT | <ul style="list-style-type: none"> Covers two categories of records Invoked rarely Subject of two Law Court cases, one LD (not enacted) No changes | 12/08/11: Amend (4-0) <i>see draft</i> | |

Public Records Exceptions Subcommittee final recommendations

Existing Public Records Exceptions, Titles 22 - 25
 Exceptions for review and discussion on December 8, 2011
 Revised 12/8/2011 12:22 PM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|---|-------------------|---|--|---|
| 62 | 23 | 8115 | Title 23, section 8115, relating to the Northern New England Passenger Rail Authority | NNEPRA | <ul style="list-style-type: none"> • Has not received any requests • Four types of records <ul style="list-style-type: none"> • Trade secrets • Records and correspondence relating to negotiations • Estimates of cost on projects put out to bid • Employment applications • No changes | 12/08/11: Amend (4-0) <i>see draft</i> | 11/17: Tabled |

Public Records Exceptions Subcommittee final recommendations

Existing Public Records Exceptions, Titles 22 - 25
 Exceptions for review and discussion on December 8, 2011
 Revised 12/8/2011 12:22 PM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|---|--|--|--|---|
| 66 | 2510 | 1 | Title 24, section 2510, subsection 1, relating to professional competence reports under the Maine Health Security Act | BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) | BOI has no role BdLicMed: <ul style="list-style-type: none"> ▶ cited 2-3 times per year ▶ PROPOSED: clarify confidentiality applies to all patient complaints MeHospAssn: <ul style="list-style-type: none"> ▶ MHA does not administer ▶ Not aware of requests ▶ No changes BdofDentalEx: <ul style="list-style-type: none"> ▶ No requests ▶ n/a MeMedAssn: <ul style="list-style-type: none"> ▶ MMA does not administer ▶ Don't know how frequent ▶ No changes | 12/08/11: Amend (4-0) <i>see draft</i> | |

Public Records Exceptions Subcommittee final recommendations

Existing Public Records Exceptions, Titles 22 - 25

Exceptions for review and discussion on December 8, 2011

Revised 12/8/2011 12:22 PM

| TITLE | SECTION | SUB-SECTION | DESCRIPTION | DEPARTMENT/AGENCY | COMMENTS | SUBCOMMITTEE RECOMMENDATION | ADVISORY COMMITTEE ACTION ON RECOMMENDATION |
|-------|---------|-------------|--|--|---|-----------------------------|---|
| 67 | 24 | 2510-A | Title 24, section 2510-A, relating to professional competence review records under the Maine Health Security Act | BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) | BOI has no role BdLicMed: <ul style="list-style-type: none"> ▶ Cited 2-3 times per year ▶ PROPOSED: allow Bd to access peer review reports MeHospAssn: <ul style="list-style-type: none"> ▶ Not aware of requests ▶ No changes BdofDentalEx: <ul style="list-style-type: none"> ▶ No requests ▶ n/a MeMedAssn: <ul style="list-style-type: none"> ▶ substantial experience ▶ not held by public entities so not subject to FOA ▶ no changes | 12/08/11: No change (4-0) | |

FAQ suggested updates 12-8-11

GENERAL QUESTIONS

What is the Freedom of Access Act?

The Freedom of Access Act ("FOAA") is a state statute that is intended to open the government of Maine by guaranteeing access to the "public records" and "public proceedings" of state and local government bodies and agencies.

Are federal agencies covered by the Freedom of Access Act?

No. The Freedom of Access Act does not apply to federal agencies operating in Maine or to federal government records. A similar but different federal statute called the "Freedom of Information Act" applies to the federal government. This federal statute does not apply to state or local government bodies, agencies or officials.

You can find the text of the Freedom of Information Act, 5 U.S.C. § 551 et seq., at: <http://www.usdoj.gov/oip/foiastat.htm> or you can find more general information on the Freedom of Information Act at: http://answers.usa.gov/cgi-bin/gsaict.cfg/php/enduser/stdadp.php?p_faqid=5940

Who enforces the Freedom of Access Act?

Any aggrieved person may appeal to any Superior Court in the state to seek relief for an alleged violation of the Freedom of Access Act. 1 M.R.S.A. § 409 (1). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

| |
|---|
| <p><u>Relief can be in the form of an injunction issued by the court that directs the government body, agency or official to comply with the law, such as by providing access to a public proceeding or by making public records available for inspection or copying.</u></p> |
|---|

In addition, the Office of the Attorney General or the District Attorneys may bring an enforcement action seeking penalties if the alleged violation is willful. 1 M.R.S.A. § 410.

What are the penalties for failure to comply with the Freedom of Access laws?

A state government agency or local government entity whose officer or employee commits a willful violation of the Freedom of Access laws commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. 1 M.R.S.A. § 410. Under the current law, there are no criminal penalties for failure to comply with a request for public records. It is a Class D crime to intentionally remove, alter, or destroy documents belonging to a state office. 1 M.R.S.A. § 452.

FAQ suggested updates 12-8-11

Are elected officials required to take training on the Freedom of Access laws?

Yes. Beginning July 1, 2008, elected officials must complete a course of training on the requirements of the Freedom of Access laws.

Which elected officials are required to take Freedom of Access training?

Elected officials required to complete the training include:

- the Governor
- Attorney General, Secretary of State, Treasurer of State and State Auditor
- Legislators elected after November 1, 2008
- Commissioners, treasurers, district attorneys, registers of deeds, registers of probate and budget committee members of any county
- Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments
- Officials of school units and school boards
- Officials of regional or other political subdivisions, including officials of water districts, sanitary districts, hospital districts, transit districts or regional transportation districts.

What does the training include?

At a minimum, the training must be designed to be completed in less than 2 hours and include instruction in:

- the general legal requirements regarding public records and public proceedings
- the procedures and requirements regarding complying with a request for a public record
- the penalties and other consequences for failure to comply with the law

Elected officials can meet the training requirement by conducting a thorough review of the material in this FAQ section of the State's Freedom of Access website or by completing another training course that includes all of this information but may include additional information.

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Do training courses need to be certified by the Right to Know Advisory Committee?

No. Training courses do not need the approval of the Right to Know Advisory Committee, or any other State agency.

How do elected officials certify they have completed the training?

After completing the training, elected officials are required to make a written or electronic record attesting that the training has been completed. The record, which will be available to the public, must be kept by the elected official or filed with the public entity to which the official was elected. A [sample training completion form is available](#) (This file requires the free [Adobe Reader](#)).

PUBLIC RECORDS

What is a public record?

The Freedom of Access Act defines "public record" as "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". A number of exceptions are specified. (See the discussion of exemptions below) 1 M.R.S.A. § 402 (3).

Do I have to be a citizen of this state to submit a Freedom of Access Act request for a public record?

No. The Freedom of Access Act provides that "every person" has the right to inspect and copy public records. 1 M.R.S.A. § 408 (1).

How do I make a Freedom of Access Act request for a public record?

See the [How to Make a Request page on this site](#).

Is there a form that must be used to make a Freedom of Access Act request?

No. There are no required forms.

Does my Freedom of Access Act request have to be in writing?

No. The Freedom of Access Act does not require that requests for public records be in writing. However, most bodies and agencies ask individuals to

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submit requests in writing in order to maintain a record of when the request was received and what records were specifically requested.

What should I say in my request?

In order for the body, agency or official to promptly respond to your request, you should be as specific as possible when describing the records you are seeking. If a particular document is required, it should be identified precisely—preferably by author, date and title. However, a request does not have to be that specific. If you cannot identify a specific record, you should clearly explain the type of records you are seeking, from what timeframe and what subject the records should contain. For example, assume you want to obtain a list of active landfills near your home. A request to the state Department of Environmental Protection asking for “all records on landfills” is very broad and would likely produce volumes of records. The fees for such a request would be very high; the agency would likely find your request too vague and ask that you make it more specific. On the other hand, a request for “all records identifying landfills within 20 miles of 147 Main Street in Augusta” is very specific and the request might fail to produce the information you desire because the agency has no record containing data organized in that exact fashion. You might instead consider requesting any record that identifies “all active landfills in Augusta” or “all active landfills in Kennebec County.” It is more likely that a record exists which contains this information. You might also want to explain to the agency exactly what information you hope to learn from the record. In other words, if you are really trying to determine whether any active landfills near your home in Augusta accept only wood waste, this additional explanation may help the agency narrow its search and find a record that meets the exact request.

Does an agency have to acknowledge receipt of my request?

Yes. An agency or official must acknowledge receipt of a request within a reasonable period of time. 1 MRSA § 408 (1).

Can an agency ask me for clarification concerning my request?

Yes. An agency or official may request clarification concerning which public record or public records are being requested. 1 MRSA §408 (1).

When does the agency or official have to make the records available?

The records must be made available “within a reasonable period of time” after the request was made. 1 M.R.S.A. § 408 (1). The agency or official can schedule the time for your inspection, translation and copying of the records during the regular business hours of the agency or official, and at a time that will not delay or inconvenience the regular activities of the agency or official. 1 M.R.S.A. §§ 408 (1) & (2).

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Does an agency have to produce records within 5 days of my request?

No. The records that are responsive to a request must be made available "within a reasonable period of time" after the request was made. 1 MRSA § 408 (1). Agencies must respond in writing within 5 working days only if your request is denied in whole or in part. 1 MRSA § 409 (1).

Do I have to go to the agency to inspect the records or can I ask the agency or official to mail me the records?

The Freedom of Access Act only requires the agency or official to make the records available to you for inspection and copying, it does not require the agency or official to mail records. However, depending on the volume of records produced in response to your request, some agencies or officials may be willing to mail copies to you. The agency may charge a reasonable fee to cover the cost of making the copies for you. 1 M.R.S.A. § 408 (1) & (3)(A).

When may a governmental body refuse to release the records I request?

The Freedom of Access Act provides that certain categories of documents are not public records. Included among these are records that have been designated confidential by statute, documents subject to a recognized legal privilege such as the attorney-client privilege or the work-product privilege, records describing security plans or procedures designed to prevent acts of terrorism, medical records, juvenile records, and the personal contact information of public employees contained within records. 1 M.R.S.A. § 402 (3)(A)-(O).

For a list of records or categories of records deemed by statute to be confidential or otherwise not a public record, see the Statutory Exceptions List. While this listing may not be totally complete, it contains the vast majority of exceptions to the Freedom of Access Act.

What happens if a public record holds some information that is open to the public and some information that falls within an exception to the Freedom of Access Act?

Some public records contain a mixture of information that is public and information that is confidential or otherwise not subject to public inspection under the Freedom of Access Act. If the record you requested contains any confidential or excepted information, the custodian will decide if the confidential or excepted information can be adequately redacted or blacked out so that public access can be provided or if public access to the document should be denied.

Does an agency have to explain why it denies access to a public record?

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Yes. When an agency denies access to a public record, it must provide the reason for its denial in writing within 5 working days of the date of the Freedom of Access Act request. 1 M.R.S.A. § 409 (1).

What can I do if I believe an agency has unlawfully withheld a public record?

If you are unsatisfied with an agency's decision to withhold access to certain records, you are entitled to appeal, within 5 working days of your receipt of the written notice of denial, to any Superior Court within the state. 1 M.R.S.A. § 409 (1). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

May a governmental body ask me why I want a certain record?

The Freedom of Access Act does not specifically prohibit agencies or officials from asking why an individual is requesting a public record. However, if asked, the individual is not required to provide a reason for seeking a record, and the agency cannot deny an individual's request based solely on either the individual's refusal to provide a reason or the reason itself. An agency or official may request clarification concerning which public record or public records are being requested. 1 M.R.S.A. § 408 (1).

Can I ask that public reports or other documents be created, summarized or put in a particular format for me?

No. A public officer or agency is not required to prepare reports, summaries, or compilations not in existence on the date of your request.

Similarly, a public officer or agency is not required to produce a record in an alternate format if the record can be made available for public inspection and copying in the format in which it exists. If the record requires translation in order for it to be made available for public inspection and copying, the agency or official must translate the record but can charge you a fee to cover the actual cost of translation. 1 M.R.S.A. § 408 (3)(C).

I asked a public official a question about a record, but he/she didn't answer. Is he/she required to answer my question?

No. A public officer or agency is not required under the Freedom of Access Act to explain or answer questions about public records. The Act only requires officials and agencies to make public records available for inspection and copying.

What records must a public officer or agency keep, and how long do they have to keep them?

The Generally, the Freedom of Access law does not control what records must be retained or for how long they must be retained. Public officers and

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agencies are required to keep all records made or received or maintained by that officer or agency in accordance with other law or rule. 5 MRSA § 92-A (5) (This file requires the free [Adobe Reader](#)).

However, the Freedom of Access law does require that a public body keep a summary of its public proceedings. The summary must include: the date, time and place of the proceeding; the members of the public body, recorded as either present or absent; and all motions and votes taken, by individual member if the vote is by roll call. The summary can be in any medium, including audio, video and electronic. This requirement does not apply to advisory bodies that make recommendations but have no decision-making authority. 1 MRSA §403 (2)

How long records must be kept depends on the type of record and the value of the record's content. The [Maine State Archives](#) works with state and local governments to establish rules for the retention and disposition of government records, including the length of time that certain records need to be preserved by the agency before they are either destroyed or sent to the Maine State Archives for long-term or permanent retention.

Are an agency's or official's e-mails public records?

Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail 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" and is not deemed confidential or excepted from the Freedom of Access Act, it constitutes a "public record". 1 M.R.S.A. § 402 (3).

Can an agency charge for public records?

There is no initial fee for submitting a Freedom of Access Act request and agencies cannot charge an individual to inspect records. 1 M.R.S.A. § 408 (3)(D). However, agencies can and normally do charge for copying records. Although the Freedom of Access Act does not set standard copying rates, it permits agencies to charge "a reasonable fee to cover the cost of copying". 1 M.R.S.A. § 408 (3)(A).

Agencies and officials may also charge fees for the time spent searching for, retrieving, compiling or redacting confidential information from the requested records. The Act authorizes agencies or officials to charge \$10 per hour after the first hour of staff time per request. 1 M.R.S.A. § 408 (3)(B). Where translation of a record is necessary, the agency or official may also charge a fee to cover the actual cost of translation. 1 M.R.S.A. § 408 (3)(C).

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The agency or official must prepare an estimate of the time and cost required to complete a request and if the estimate is greater than \$20, the agency or official must notify the requester before proceeding. The agency may request payment of the costs in advance if the estimated cost exceeds \$100 or if the requester has previously failed to pay a fee properly assessed under the Freedom of Access Act. 1 M.R.S.A. § 408 (4) & (5).

I cannot afford to pay the fees charged by the agency or official to research my request or copy the records. Can I get a waiver?

The agency or official may, but is not required to, waive part or all of the total fee if the requester is indigent, or if release of the public record is in the public interest because it 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. 1 M.R.S.A. § 408 (6)

Is a public agency or official required under the Freedom of Access Act to honor a "standing request" for information, such as a request that certain reports be sent to me automatically each month?

No. A public body is required to make available for inspection and copying (subject to any applicable exemptions) only those public records that exist on the date of the request. Persons seeking to inspect or obtain copies of public records on a continuing basis are required to make a new request for any additional records sought after the date of the original request.

PUBLIC PROCEEDINGS

What is a public proceeding?

The term "public proceeding" means "the transactions of any functions affecting any or all citizens of the State" by the Maine Legislature and its committees and subcommittees; any board or commission of a state agency or authority including the University of Maine and the Maine Community College System; any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; the full membership meetings of any association, the membership of which is comprised exclusively of counties, municipalities, school districts, other political or administrative subdivisions, or their boards, commissions, agencies or authorities; and any advisory organization established, authorized or organized by law, resolve or executive order. 1 M.R.S.A. § 402.

What does the law require with regard to public proceedings?

The Freedom of Access Act requires all public proceedings to be open to the public and any person must be permitted to attend. 1 M.R.S.A. § 403.

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When does a meeting or gathering of members of a public body or agency require public notice?

Public notice is required of all public proceedings if the proceedings are a meeting of a body or agency consisting of 3 or more persons. 1 MRSA § 406.

What kind of notice of public proceedings does the Freedom of Access Act require?

Public notice must be given in ample time to allow public attendance and must be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency. 1 M.R.S.A. § 406.

Can a public body or agency hold an emergency meeting?

Yes. Public notice of an emergency meeting must be provided to local representatives of the media, whenever practicable. The notice must include the time and location of the meeting and be provided by the same (or faster) means used to notify the members of the public body or agency conducting the public proceeding. 1 MRSA § 406. The requirements that the meeting be open to the public, that any person be permitted to attend and that records or minutes of the meeting be made and open for public inspection still apply. 1 MRSA § 403.

Can public bodies or agencies hold a closed meeting?

Yes. Public bodies or agencies are permitted, subject to certain procedural conditions, to hold closed "executive sessions" on specified subjects after a public recorded vote of 3/5 of the members present and voting. 1 M.R.S.A. § 405 (1)-(5).

Can the body or agency conduct all of its business during an executive session?

Generally, no. The content of deliberations during executive sessions is restricted to the matters listed in the Freedom of Access Act, such as: discussions regarding the suspension or expulsion of a student; certain employment actions; the acquisition, use or disposition of public property; consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and discussion of documents that are confidential by statute. In addition, any body or agency subject to the Freedom of Access Act is prohibited from giving final approval to any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session. 1 M.R.S.A. § 405 (2) & (6).

What if I believe a public body or agency conducted improper business during an executive session?

Upon learning of any such action, any person may appeal to any Superior Court in the State. If the court determines the body or agency acted illegally,

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the action that was taken by the body or agency will be declared to be null and void and the officials responsible will be subject to the penalties provided in the Act. 1 M.R.S.A. § 409 (2). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

Can members of a body communicate with one another by email outside of a public proceeding?

~~There is no legal prohibition against email communication between members of a public body outside of a public proceeding.~~

The law does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of the Freedom of Access law. 1 MRSA § 401.

~~However, email~~ Email or other communication among a quorum of the members of a body that is used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any functions affecting any or all citizens of the State..." 1 MRSA § 402. The underlying purpose of the Freedom of Access law is that public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. 1 MRSA § 401. Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. 1 MRSA § 403. In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. 1 MRSA § 406.

Members of a body should refrain from the use of email as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. Email is permissible to communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.

Email is a public record (likely even when sent using a member's personal computer) if it contains information relating to the transaction of public or governmental business unless the information is designated as confidential or excepted from the definition of a public record. 1 MRSA § 402, sub-§ 3. As a result, members of a body should be aware that all emails and email attachments relating to the member's participation are likely public records subject to public inspection under the Freedom of Access laws.

Can I record a public proceeding?

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Yes. The Freedom of Access Act allows individuals to make written, taped or filmed records of a public proceeding, or to broadcast the proceedings live, provided the action does not interfere with the orderly conduct of the proceedings. The body or agency holding the proceeding can make reasonable rules or regulations to govern these activities so long as the rules or regulations do not defeat the purpose of the Act. 1 M.R.S.A. § 404.

Do members of the public have a right to speak at public meetings under the Freedom of Access Act?

The Freedom of Access Act does not require that an opportunity for public participation be provided at open meetings, although many public bodies or agencies choose to permit public participation. In those instances, the public body or agency can adopt reasonable rules to ensure meetings are conducted in a fair and orderly manner. For example, the body or agency can set a rule that requires the same amount of time be afforded to each person that wants to speak.

Is the public body or agency required to keep running minutes or a record of a public proceeding?

There is no requirement under the Freedom of Access Act that a public body or agency keep running minutes during all public proceedings. The Act does require, however, that public bodies and agencies keep a written record of every decision that involves the conditional approval or denial of an application, license, certificate or permit, and every decision that involves the dismissal or refusal to renew the contract of any public official, employee or appointee. 1 M.R.S.A. § 407 (1) & (2).

If the public proceeding is an "adjudicatory proceeding" as defined in the Maine Administrative Procedure Act, the agency is required to compile a record that complies with statutory specifications, including a recording in a form susceptible of transcription. 5 M.R.S.A. §§ 8002 (1) and 9059.

Is the agency or body required to make the record or minutes of a public proceeding available to the public?

Yes. Any legally required record or minutes of a public proceeding must be made promptly and shall be open to public inspection. In addition, every agency is required to make a written record of any decision that involves conditional approval or denial of any application, license, certificate or other type of permit and to make those decisions publicly available, 1 M.R.S.A. §§ 403, 407; 5 M.R.S.A. § 9059 (3).

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